



POLICE DEPARTMENT

The
City
of
New York

September 22, 2010

MEMORANDUM FOR: Police Commissioner

Re: Deputy Chief Michael Marino
Tax Registry No. 873220
Patrol Borough Brooklyn North
Disciplinary Case No. 83969/08

The above-named member of the Department appeared before me on April 12, 13, 14, May 4, 5, 6 and 20, 2010, charged with the following:

1. Said Deputy Chief Michael Marino, while assigned to Patrol Borough Brooklyn North, on or about and between January 24, 2006 and September 25, 2007 did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Deputy Chief did possess and/or use anabolic steroids and/or human growth hormones (hGH) for purposes outside the normal course of standard medical care. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Deputy Chief Michael Marino, assigned as indicated in Specification #1, on or about and between May 1, 2007 to October 17, 2007, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Deputy Chief did patronize a pharmacy that he was aware had been the subject of an investigation for illegal and/or improper sales of anabolic steroids and human growth hormones (hGH). *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

The Department was represented by Lisa A Bland, Esq and Nancy Slater Esq Department Advocate's Office, and the Respondent was represented by Michael Shapiro, Esq and Laura Reeds, Esq

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review

DECISION ON MOTION

Prior to the trial in this matter the Respondent moved to suppress evidence he claimed was derived in violation of the rules of Grand Jury secrecy In the alternative he requested a hearing on the issue Both applications were denied by this Court in a written decision dated May 26, 2009 That decision is incorporated by reference into this report and recommendation and a copy is appended hereto

PRE-TRIAL ORDER

On application of the Respondent herein an order was issued in the Supreme Court of New York, New York County, O Peter Sherwood, JSC, ordering that the portion of this disciplinary hearing involving the Respondent's medical records including introductions into evidence of those records and concerning the Respondent's medical records and treatment to be sealed A copy of the Order is appended hereto

DECISION

The Respondent is found Guilty of Specification No 1 and Not Guilty of Specification No 2

INTRODUCTION

The trial of this case was essentially divided into two parts. One part dealt with facts regarding an Internal Affairs Bureau (IAB) investigation and the Respondent's conduct vis-a-vis the treatment he received from Dr [REDACTED] which involved the use of human growth hormones and steroids. The other part of the case dealt with the competing medical opinions of Dr Green and Dr Gordon regarding the treatment provided by [REDACTED] and the appropriate medical use of testosterone.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Deputy Inspector Daniel Carone, Detective Patrick Streffacio, Deputy Chief Thomas Mason and Dr Gary A. Green, M.D., as witnesses.

Deputy Inspector Daniel Carone

Carone a 21-year veteran of the Department, has been serving as the Queens Borough Commander for IAB since March 2008. Prior to that appointment and at the time of the investigation, Carone was a captain and the Commanding Officer of IAB Group 33, which covered an area that encompasses southern Brooklyn and all of Staten Island.

Carone testified that he has had experience investigating and/or supervising approximately 18 to 20 cases involving the improper use of steroids, some of which were substantiated and some of which were not. In May 2007, he was working on an investigation that involved several allegations of steroid use in the area within the

command that he supervised One incident which drew his attention to a possible investigation of the topic involved Lowen's Pharmacy, located in the confines of the 68 Precinct, Brooklyn Lowen's had been raided by the State Bureau of Narcotics Enforcement (BNE) investigators and a news article that came to Carione's attention claimed that the pharmacy had been found to be in possession of illegally imported Chinese anabolic steroids and human growth hormone As a result of reading that article, Carione assigned an investigator of his own to the group to go along with the lead investigator of the seizure, BNE Senior Investigator Mark Haskins

Carione recalled that he first met with Haskins in late May 2007, and that the initial meeting involved him and members of the investigative group speaking about historical patterns of steroid cases that had come into the group Many of the cases involved allegations that individuals had been receiving prescriptions or medications through the mail and Carione thought that there could be a possible connection between Haskins' cases and IAB steroid investigations Initial comparison of information, however, yielded no such nexus

On or about August 8, 2007, Carione stated, he and his group were investigating a series of allegations that had come in through an anonymous reporter It was alleged that a trainer in a Staten Island gym was being threatened by an identified off-duty sergeant who was also a trainer at the gym and who was abusing anabolic steroids As a result, Carione's group conducted several interviews with the individual being threatened During the third interview, on or about August 8, 2007 the complainant informed him that she had learned from conversations with other trainers that in fact many people in her gym, a Dolphin Gym located in the confines of the 123 Precinct, Staten Island, were

using anabolic steroids, and that there was a doctor, [REDACTED] associated with that gym. Carione learned that this doctor ran an anti-aging clinic of some sort that he had a website to facilitate appointments to the clinic, and that he was in fact prescribing anabolic steroids to the members of that gym.

Carione stated that he had heard [REDACTED]'s name before, in the initial conferral with Haskins in June of that same year. Haskins had asked him if the doctor or his facility had any nexus in his cases, but at the time they did not. The night that he heard the name again, Carione called Haskins to confirm that it was in fact the same person and the same clinic, a New York Anti-Aging Clinic located on Clove Road. Once he determined that there was in fact a connection between the investigation that he was conducting and the BNE investigations, Carione asked to meet with Haskins and his team again. On August 25, after a meeting in Carione's office, Carione accompanied Haskins and his investigators to [REDACTED]'s Seaview Avenue office in Staten Island. He also brought along Detective Patrick Streffacio and Lieutenant John Lyons.

When they arrived in the office there were approximately five or six very muscular white males in the waiting room, "bodybuilder" types. The investigators identified themselves to the secretary and then Carione, Haskins, Haskins' assistant Rick Boechler, and Lyons were escorted in to see [REDACTED]. Carione explained that although the rest of them were present, the initial conversation was held exclusively between Haskins and the doctor. Haskins asked about several of the individuals that were in the waiting room, and even sat with the doctor and reviewed the electronic chart of one patient in particular. Haskins proceeded to ask a series of questions regarding the prescriptions that that individual had received.

Carione testified that initially [REDACTED] s demeanor during the meeting was professional, but that as the conversation with Haskins progressed he became increasingly upset, more nervous, and less sure of himself as he spoke. Haskins repeatedly challenged the doctor as to the prescriptions that were written to that one individual whose chart they were looking at, specifically centering around the large number of anabolic steroids that [REDACTED] had prescribed. [REDACTED] was attempting to discuss studies that he had conducted himself which would indicate that his use of these steroids in this manner for this person was beneficial and part of a new emerging science, while Haskins kept turning to New York State Law and medical practices to establish that [REDACTED] s actions actually violated medical practices as they relate to the prescriptions of anabolic steroids to patients.

Carione confirmed that during the course of the conversation with Haskins [REDACTED] made admissions which corroborated his own investigation. At one point [REDACTED] began to weep and told them that he had entered into a business with numerous individuals that he then went on to name. Initially as [REDACTED] described it, the business was going to be an anti-aging clinic associated with the gym. The gym would refer people to the clinic, "and it would be sort of like you pay a membership fee, and you would be seen by the doctor, he would facilitate treatment with human growth hormone and anabolic steroids." [REDACTED] described a situation that ultimately degenerated into his being pressured and forced to write ever-increasing prescriptions to people that he was not involved with treating and/or seeing. People would pay an average membership fee of \$1,000 and would be seen at a secondary facility on Clove Road called the Fountain of Youth, which was the headquarters for the New York Anti-Aging Clinic. Fountain of

Youth was also where the patients would receive the actual treatment. Carione reiterated that when [REDACTED] was discussing the benefits of the program, everything he would state would be refuted by Haskins citing medical practices and New York State law. At the end of the interview, Carione asked [REDACTED] if he had any patients that were police officers. [REDACTED] replied in the affirmative.

Following the meeting, Carione said, he responded to that second office, located at 821 Clove Road in Staten Island. He had already sent Streffacio and Lyons over with Boechler. A photograph of the building taken that day by Streffacio was entered into evidence as DX (Department Exhibit) 1, and another photograph, an enlarged version of the left side of the first one, was entered into evidence as DX 2.

When he and Haskins arrived at the Fountain of Youth building to meet up with Streffacio and Boechler, the office was not open but the others were already inside. Aside from them, there was also a psychologist present who was using [REDACTED]'s office to interview a patient of his own. At the time, [REDACTED] was still at the Seaview Avenue location. Carione said that when he got there, he and Haskins were walking the length of the office looking at the layout when a credit card machine with several yellow copies of charges from the credit card machine caught his eye. Carione recognized the names of two police officers, and made note of one name. He then called his command and had the "IA Pro"¹ pulled up to see if the spelling was the same.

Carione also recognized the Respondent's name on a running sheet with pedigree information that had his name, address and date of birth. He verified that it was in fact the Respondent through a "PEPR" check, a personnel function that gives names, dates of birth, commands, and addresses of members of the Department. Carione said that he

¹ A computer database maintained by the Internal Affairs Bureau

called his group at IAB and had them verify the information At the time, the Respondent was the Executive Officer of Patrol Borough Brooklyn North Carione said that he notified his Borough Commander that they had seen several names, not just the Respondent's, which were consistent with members of the Department that were associated with this clinic Carione attempted to get access to the information with respect to the names that he saw and was initially denied Eventually he was granted access and assigned Streffacio to analyze the prescription records As a result of receiving these records the investigation was classified as a corruption case Initially there were 20 to 25 subjects in the investigation, which was looking specifically for anabolic steroid prescriptions

Two search warrants were executed in this case, on October 15 and 16, 2007 The location of the search warrant was Lowen's Pharmacy According to Carione approximately ten million dollars in Chinese import anabolic steroid and human growth hormone were seized Carione testified that media reports after the search warrants were executed did in fact mention particular members of the service An article from the New York Post dated October 18, 2007, specifically named the Respondent as being involved in a steroid probe (DX 3)

Carione stated that he believed that the Respondent voluntarily subjected himself to a Dole test on October 17 2007 the day before the article was published and right after the October 15 and 16 searches at Lowen's Pharmacy Carione acknowledged that a reporter named Allison Gendar spoke to him generally about the investigation on the day of the first search warrant and he had admonished her not to print the Respondent's name According to Carione, Gendar approached him and said that she had heard there were as

many as 50 Department employees involved, including a "prominent chief" Carone made it very clear to her that if she printed anyone's name, she would be doing somebody a very big disservice. He stated, "She confronted me, and I told her, verbatim, 'You would be making a terrible, terrible mistake if you printed his name.'" Carone maintained that throughout the brief exchange neither he nor Gendar actually used the Respondent's name, but that based on her usage of the term "a prominent chief," he assumed that she was referring to him. Neither he nor, as far as he knows, anyone on his staff notified the press that the search warrant was going to be executed.

On continued direct examination, Carone acknowledged that he was aware that the Respondent had requested an interview with the Chief of IAB shortly after the execution of the search warrants, and that he was made aware of the substance of parts of that interview by then-Inspector Mason. After he found out about the interview, Carone requested prescription records for human growth hormone from Lowen's regarding [REDACTED] s prescriptions, and he believed that a request was also made through Mason for the Respondent's medical records. In addition, Carone requested that a HIPAA² release be signed by the Respondent, which was later received by Streffacio. On *voir dire* examination, Carone stated that he believed the HIPAA release was faxed from the Chief of IAB's office by Mason. At the time of this testimony Carone was unable to confirm that the signature on the release was the Respondent's signature (DX 4).

On continued direct examination, Carone agreed that there was an official Department interview³ conducted with the Respondent on January 14, 2008, and that the interview was recorded (DX 5A is the audio recording of the interview and DX 5B is the

² Health Insurance Portability and Accountability Act (HIPAA) regulates the use and disclosure of health care data.

³ This is referred to at trial as a "GO-15" or a "P.G." hearing.

corresponding transcript)

Carione stated that during the Respondent's interview the Respondent told him about how he had become a client of [REDACTED]'s and that he had to pay an out-of-pocket upfront fee of \$1,000 for the year. According to the transcript which Carione read for the Court, the Respondent believed that he had paid that fee by credit card. The Respondent said that [REDACTED] put him on a regimen of testosterone and Somatropin. He would have to inject the human growth hormone six times a week with a very small needle. The Respondent said that the doctor told him he would no longer feel the pain in his neck and shoulder that he was feeling from his on-duty injuries and that it would help offset the chronic fatigue that is in his bloodstream to get him back to normal. The Respondent also informed the doctor that he is a police officer and cannot be perceived as doing anything illegal and that his levels can never go above normal. The doctor replied that he understood that and that the people who are using this kind of treatment to body build are going to be three or four times the normal level, but that this was about getting the Respondent back to normal.

The Respondent, Carione said, had filled his prescriptions at Lowen's Pharmacy and the Respondent continued to see [REDACTED] and patronize Lowen's after they were raided by state investigators.

On cross-examination, Carione affirmed that before he and Haskins submitted affidavits in support of search warrants for Lowen's, the Albany District Attorney's (DA's) office had issued a grand jury subpoena for Lowen's prescription records and that Lowen's complied. Carione also described how when they had gone in to search Lowen's on October 15, he had realized that the warrant might not cover the entire

premises as the inside of the buildings were gutted out and extended past the address on the warrant. He figured that it would be safer to apply for another search warrant, which he did himself.

Carione acknowledged that he received a disk with the records that had been turned over pursuant to the grand jury subpoena, but stated that as of the August 15, 2007 interview with [REDACTED] he had not yet done an analysis of those records. He subsequently had Streffacio compare the list of names of Department police officers with the list of names on the disk from Lowen's to see whether or not there were any names in common. Streffacio reported back to him on a worksheet dated September 28, 2007, but Carione acknowledged the fact that worksheets in this case are not all contemporaneous with the information that they are reporting.

Carione was shown Respondent's Exhibit (RX) A, a pre-warrant⁴⁹ dated October 15, 2007, which he had authored. He acknowledged that the report refers to the original raid of Lowen's on May 9, 2007 by BNE, to the August meeting with [REDACTED] to the records from the Albany grand jury (that were compared with Department records and that identified 18 members of the Department that had received injectable human growth hormones and anabolic steroids from Lowen's), and to the 16 members of the service, some of whom appeared to have been on the injectable list but others who received creams and gels which contain different percentages of testosterone. Carione reiterated that the analysis of this information was done prior to the execution of the search warrants. He also said that the only time he had any conversation with a reporter was the exchange with Gendar of the New York Daily News, and that as far as he knew, no one on his team had spoken to any reporters regarding a search happening that day.

⁴⁹ Department memorandum or report

Carione acknowledged that originally there had been two chiefs involved in the investigation. At the time of his conversation with Gendar, one chief had already been discounted and so he assumed that she was referring to the Respondent when she mentioned a "prominent chief," but he had no way of knowing that for sure. He simply told her that releasing any of that information would be a mistake.

Carione acknowledged that he did not have a search warrant for Clove Road and agreed that he had entered the premises despite the fact that it was closed. Once inside he saw credit card slips with the names of police officers that he recognized and whom he had worked with. Those names eventually became subjects of the investigation and were eventually among the names that were disclosed from the Lowen's Pharmacy records. The Respondent's name was not one of the names on the credit card slips, it but was on a printout on a table opposite the kiosk secretary area. Streffacio took the pictures shown in DX 1 and DX 2, but neither Carione nor Streffacio took any photographs of the interior of the building or of the documents, although nothing would have prevented them from doing so.

Carione again described the conversation between Haskins and [REDACTED]. He said that Haskins stepped to the doctor's side of the computer terminal to discuss certain electronic doctor's notes and lab results, and that when he attempted to join them, Haskins stopped him and told him to remain on the other side. Haskins and [REDACTED] proceeded to have a conversation about what was on the computer screen which Carione overheard. It involved testosterone levels, insulin factor levels, the description of anabolic steroids and some of the complementary prescriptions that persons who are abusing or using anabolic steroids commonly use, such as Aimatest and Genotropin.

The discussion involved one of the people that had been sitting in the waiting area when they arrived. Streffacio was not present for the conversation and no notes or recordings were made of it at that time. There was a report written about the meeting, a worksheet prepared by Streffacio with information that Carione gave him from memory. Carione said that [REDACTED] described a situation where he was being coerced into writing prescriptions for anabolic steroids to individuals that he would not even treat.

Carione agreed that it was fair to say that at each step of the way what was done by him and members of his team was documented in these investigative reports and that he had reviewed Streffacio's worksheet after he had written it. He also said that he interviewed [REDACTED] a number of times.

Carione reiterated that while he and the other people with him were moving around [REDACTED]'s Clove Road office there was no one else there other than the psychologist at the other end of the building. Carione did not think he needed a search warrant to do this. He also said that [REDACTED] had told Haskins that the people in the waiting room were all his patients but he did not recall a memo being written about that fact. Carione did say that there was a worksheet, worksheet 19 in the case folder, dated September 3, which captured the entire visit to the 821 Clove Road location. He acknowledged that although it was reporting on events that occurred on August 15, it had not been prepared until September 3.

Carione then explained that on August 15, he and his team made an initial request for the Lowen's prescription disk records and were denied by both Haskins and the chief investigator, who said that they would need a so ordered request from a judge. It was not until later that they received the records pursuant to the grand jury investigation currently

underway with the Albany DA, without having to obtain a so ordered subpoena. Carione did not get any names from [REDACTED] when he interviewed him at Seaview Avenue, but when he went to Clove Road and saw the names he wrote down the information on his pad and called his counterpart at Group 33. Carione called Borough Commander Deputy Inspector Terrence Moore and informed him that [REDACTED] had made admissions earlier that several police officers were involved with his practice, including the possible implication of a high-ranking member of the Department.

Carione confirmed that there was no written notification made, and that as far as he knows there was nothing in writing at that time which showed that Group 33 had information that the Respondent was a patient of [REDACTED]. Carione not take the paper that had the names and pedigree information of two individuals (including the Respondent) with him, although he believed the state officials took them along with the credit card receipts that also had names on them.

Carione refreshed his memory from worksheet 41, and said that he interviewed [REDACTED] again on October 5, after he compared the Lowen's records to the Department roster. By that time, 26 police officers had been identified as being patients of [REDACTED], 18 of whom were subsequently identified by [REDACTED] himself when he was shown a photo array. In addition to identifying them, he also gave more information about those individuals, including telling Carione whether they were legitimate patients receiving steroids for legitimate medical reasons, or were patients in name only for the purpose of getting steroids for bodybuilding or bulking up. He did not suggest that the second type of patients were receiving medically necessary treatments.

Carione testified that the Respondent was one of the people that [REDACTED] told him

was receiving treatment that was medically necessary and appropriate He also said that the Respondent was a model patient, that he had lost 50 to 60 pounds and lowered his cholesterol Carione acknowledged that he did not have any HIPAA releases from any of those people at that time

Carione said that he met with [REDACTED] again on October 26, at which time he showed [REDACTED] another photo array and [REDACTED] identified another deputy chief as one of his patients Carione did not recall exactly when he had first learned that this deputy chief was a patient of [REDACTED]'s, but said that it was after he had gotten the Lowen's records He said that the deputy chief in question had been prescribed a pharmaceutical product that is very low in dose and used commonly to treat low testosterone level symptoms in men, was produced by a recognized pharmaceutical corporation and was filled at a CVS Pharmacy, not Lowen's Carione believed that deputy chief came in for an interview with the Chief of IAB, and submitted to a voluntary Dole test as well

Carione explained that although they attempted to record the October 5 interview electronically, for some reason the digital recorder malfunctioned The report that was prepared by Streffacio and which contains the information from that interview as well as the October 26 interview, is dated December 11, 2007 (RX B) Carione reviewed the report before he signed off on it Carione was aware that a number of individuals whose names appeared on RX B had already pled guilty to charges related to this investigation

Carione confirmed that at his official Department interview the Respondent told him that before he received any prescriptions from [REDACTED] a blood test was done The Respondent's medical records from [REDACTED] indicate that there was an initial blood test, as well as the prescription report (RX C)

Carione said that when he spoke with the Respondent he learned that Quest Diagnostics did his blood work. The Respondent's Quest Diagnostics lab test had a collection date of January 16, 2006, and a report date of January 24, 2006 (RX D). Carione he did not go to Quest Diagnostics with the HIPAA release he had gotten from the Respondent and ask them for a copy of the test. Prior to this case, Carione was unfamiliar with what would be considered normal, low, or high testosterone levels, but he consulted with experts and obtained a copy of a textbook (Anabolics 2005) in order to educate himself. He learned how to read lab reports and among the things he picked up was the protocol, that if a particular value is out of the normal range it is identified in a separate column or in some way on the lab report, so that it can be seen at a glance. Carione said that during the official Department interview, the Respondent told him that his first blood test was low for testosterone.

Carione was shown the newspaper article (DX 3) and identified the picture as a Dolphin Gym, but not the one associated with the steroid case that they were investigating. Carione confirmed that during the official Department interview he asked the Respondent a number of questions as to whether or not he worked out at Dolphin Gym and the Respondent said that he absolutely never did. Carione had no information to the contrary. The Respondent also told Carione at that time that during his first meeting with [REDACTED] after his blood work was done [REDACTED] asked him questions about whether he took DHEA (dehydroepiandrosterone), an over-the-counter supplement, since he had an abnormally high level of DHEA. The Respondent told [REDACTED] that he did not take it and did not know what it was. Carione stated that he had no information which would show that the Respondent's response was untrue. The Respondent told Carione

that [REDACTED] then informed him that DHEA is an immune hormone in the body and that abnormally high levels of it could throw off the levels of other hormones in the body. He also told the Respondent that his testosterone level was very low. According to the official Department interview, this meeting took place on January 24, 2006.

Carione was shown RX D, the Respondent's lab report and identified where at the bottom of page 2, in a report for DHEA sulfate, the level was shown to be high and in the next column, the total testosterone and the free testosterone, the levels were shown to be low. He said that over the course of the investigation he learned how [REDACTED] and his staff kept the medical records, which was that when they received lab work from Quest Diagnostics they entered it into a computer and then they discarded the actual lab report itself. Carione refreshed his memory from the official Department interview and read that as of December 5, 11 months after [REDACTED] started treating the Respondent, the Respondent's testosterone level was at 351, the bottom end of the normal range. He also noted that as of May 7, 2007, the Respondent was still under [REDACTED]'s care and his testosterone levels were also in the normal range. Carione remembered that the Respondent had told him that [REDACTED] had mentioned DHEA hormones and stress-related issues as possible causes for his testosterone problem.

Carione was shown a worksheet that memorialized his interview with [REDACTED] and Haskins on August 15, 2007, which he said was also the day that he, Haskins, and Streffacio went to the Clove Road office and observed the names of some police officers including the Respondent. Carione said that he reviewed it and signed off on it after it was prepared.

Carione was shown an article from the October 26, 2007 issue of the New York

Daily News written by Gendar (RX E), and testified that he had never seen the article before. He agreed that it mentions both the Respondent and another deputy chief. He also agreed that it was 11 days after his conversation with Gendar at Lowen's, 11 days after the time that he believed the other chief had been cleared in the investigation. Carione was shown another article, from November 1, 2007 (RX F), which also relates to the investigation and which mentions both the Respondent and the other deputy chief.

Both articles mention that the Respondent was cleared of wrongdoing by IAB. When asked by the Court, Carione clarified that this was not entirely accurate as they were not exactly cleared, he explained that there was a point in time where the case was broken down into several categories of officers, i.e., those using injectable anabolic steroids, those using oral steroids, and those using just topical creams or anabolic steroids, both testosterone and stanozolol. The group of least concern was the group of individuals who were using just topical creams and at that point both the Respondent and the other chief were only in that group as far as Carione's people knew.

Carione said that to the best of his knowledge the Respondent was interviewed on the day of the Dole test, on or about October 17, 2007, by Chief Campisi and Mason. He was not sure if there were other people present. The test for drugs was, to Carione's knowledge, completely negative. During the interview, the Respondent disclosed that he had used the injectable Somatropin and Norditropin.

On redirect examination, Carione reiterated that he was able to get into 821 Clove Road without a search warrant even though it was closed. [REDACTED] had given the keys to the office to both Streffacio and Boechler in his presence and they were both already there by the time that he arrived on the scene. Based on Carione's knowledge of the

investigation, the other deputy chief did not patronize Lowen's Pharmacy

On re-cross examination, Carione confirmed that the other deputy chief was a patient of [REDACTED] s

Detective Patrick Streffacio

Detective Patrick Streffacio, a 23-year veteran of the Department, has been assigned to IAB for the last ten years and is currently assigned to Queens IAB as an investigator. Prior to that, from 2000 through 2008, he assigned to Group 33 in Brooklyn. Streffacio said that while assigned to IAB he had investigated approximately 40 cases, including one case involving the improper use of steroids, this case. Streffacio said that there were 24 subjects in total that were part of this investigation, some of whose cases were substantiated and some of whose were not.

In May of 2007, Streffacio was an investigator in Group 33. He testified that Carione gave him an article from the New York Post about the raid on Lowen's and asked him to contact the people that had been conducting the investigation there. Streffacio said that he left his number and Carione's number for Haskins to call them back and that eventually there was contact made between Haskins and Carione.

Streffacio said that there came a time when he learned about an investigation involving a trainer at Dolphin Gym and an NYPD sergeant. Another investigator had the case and after Carione went out to do the interviews he came back and shared the results. Streffacio said that in June 2007 he was assigned to the investigation involving possible members of the Department involved with [REDACTED] and Lowen's Pharmacy and that his initial investigatory steps involved attempting to get a copy of the list of prescriptions that Lowen's had written during the course of 2006 and 2007 from Haskins.

On August 15, 2007, Streffacio was involved in a meeting with members of BNE. Afterwards he and Carione accompanied Haskins and Boechler to [REDACTED] s office at 345 Seaview Avenue. Haskins and Boechler were there to interview him about the prescriptions he was writing and they were going to try to obtain some information. Streffacio was present for the beginning of the interview but then left with Boechler to go to the Clove Road office. [REDACTED] had told them that he had files on his computer there and had given them access, as well as the keys. He did warn them that there was a psychologist renting space in the office. The psychologist had apparently already spoken to [REDACTED] and knew that they were coming by the time that they arrived.

Streffacio said that once in [REDACTED] s office, Boechler hooked up a portable hard drive and downloaded the files from [REDACTED] s personal computer. Streffacio stated that he did not personally download any files. Eventually Carione and Haskins arrived at the location and Carione informed him that [REDACTED] had admitted to some kind of fraud regarding the writing of prescriptions that was taking place between him, the people that had owned Dolphin's Gym in Staten Island and Lowen's Pharmacy. To the best of Streffacio's knowledge, no one from IAB was searching the office.

Streffacio said that at one point the group saw a list that had names of people connected to the Department on it. He explained that it was a computerized list in the open in the reception area and that some names stuck out. He did not see any prescription records, but had already arranged with Haskins to receive the 2006 list of customers from Lowen's. Streffacio said that he got a subpoena signed by the Deputy Commissioner of Legal Matters and was told that he needed one signed by a judge. Eventually he got access and identified 18 members of the service, including the

Respondent, in the analysis That analysis took place in September of 2007 When Streffacio analyzed the list he narrowed it down to only those people who were using anabolic steroids In terms of the Respondent, at that time there was no information regarding the use of human growth hormone, but the records did show that he was using a testosterone cream in a 10% and (Streffacio believed) a 12.5% strength

After the analysis Streffacio and his team executed search warrants at Lowen's on October 15 and 16, and at some point obtained a list of human growth hormone patients as well There was a lot of media coverage after the searches, and that there were media members there at the scene Streffacio had no idea how the media knew to be there

Streffacio stated that they prioritized recent users of injectable anabolic steroids as opposed to creams or gels because they are more persistent in the body (since they go through the liver and tend to circulate through and stay in the body longer) There was therefore a greater likelihood that they were going to test positive when tested for cause At the time, they had no information that the Respondent was using any injectables and he was not seen as a priority at that time

Streffacio said that Carione informed him that the Respondent had requested an interview with the Chief of IAB Carione then asked him to write some questions for the interview, which he did After it had taken place Carione informed him of the substance of the interview, including the fact that the Respondent had told them that he was using human growth hormone Streffacio asked Haskins for a copy of the list of customers that received human growth hormone from Lowen's and the Respondent's name was on that list Prior to the Respondent's admission the Respondent had not been listed as a subject in the investigation, both because as a cream or gel user he was not a priority in the case

and because of the "fact he is deputy chief ' There was another deputy chief who was identified as part of the investigation, but his name was not on the list of human growth hormone users, nor was he using any injectables

On cross-examination, Streffacio affirmed that when he first spoke to Haskins about the disk of Lowen's customers he was told that he would need a subpoena. He eventually got the disk, not from Haskins but from Amy Colb, the attorney for Lowen's pharmacy. Streffacio knew that Haskins' investigation was part of a larger investigation being conducted by the Albany DA and that he now knows that the Albany DA had issued a subpoena to Lowen's for their preparation records.

Streffacio said that the Respondent's name first came to his attention when he saw it on the computerized list inside the Fountain of Youth building owned by [REDACTED]. He called his office, verified the Respondent's address and home telephone number, and determined that it was in fact the same individual. This information did not require documentation at this time and Streffacio did not speak to [REDACTED] about the Respondent on that day. Streffacio first learned that the Respondent was a customer of Lowen's when he compared the Lowen's list to the list of police officers in New York City, after which he spoke to [REDACTED] about his police officer patients.

Streffacio acknowledged that at some point he learned from Carione of the Respondent's 49 requesting to be interviewed by the Chief of IAB. He drafted some questions for that interview as requested, sometime before October 17, 2007. Streffacio was not present for that interview, but prepared a memo of the results of that interview that was dated November 15, 2007. He did not recall exactly how much time passed between the interview and the writing of the report, nor could he remember the exact date.

of the interview. The information that went into the memo was given to him by Carione, although the interview was conducted by Mason.

Streffacio was asked if he knew what form of testosterone is preferred by doctors for patients who suffer from low testosterone and he answered, "AndroGel 5%, 1% is the only things that is approved by FDA.⁵ Some doctors use injectable testosterone in treating low testosterone and that, based on what Streffacio learned in his investigation, this is improper. Injectables are more persistent in the body and are therefore preferred by bodybuilders. He said that this was the reason that he divided the list of police officers who received prescriptions from Lowen's into those that received injectables and those that received creams and gels in order to focus on the ones that received injectables because due to the persistency, they were more likely to test positively.

Streffacio testified that on October 5, 2007, he interviewed [REDACTED] and showed him a photo array at a lawyer's office. A worksheet was prepared on that same day. Streffacio said that they planned to digitally record the interview with Carione's recorder and that he believed that they did test the recorder before they entered the office. As far as he knew at the time of the interview the whole thing was being recorded and afterwards they even listened to it briefly to make sure that it had worked. Streffacio thought that it must have been the transfer of data to the compact disc (CD) that did not work properly. He also took notes during the interview of what was being said and those notes captured everything [REDACTED] talked about. Streffacio did not know how long after the interview the attempt was made to transfer the information to CD.

Streffacio confirmed that on December 11, 2007, he prepared a worksheet memo

⁵ Upon later investigation and subsequent to written submissions by both sides, it was stipulated that this comment about the Food and Drug Administration (FDA) approval is inaccurate.

of the October 5 interview. That memo notes that the interview had been electronically recorded, and at the time Streffacio did not know that anything had gone wrong with the transfer. He said that the purpose of the tape was not to have a word for word memorization of the interview but just to be able to refresh his memory.

Streffacio was given a copy of his handwritten notes from the interview, and confirmed that they captured in sum and substance everything [REDACTED] had said, although not word for word. During that interview, [REDACTED] told Streffacio that for some of the police officers and firefighters for whom he prescribed steroids he did so essentially for bodybuilding purposes, while others, including the Respondent received prescriptions that were medically necessary. When asked what that meant, [REDACTED] described how the Respondent had lowered his cholesterol and lost 50 or 60 pounds. That part of the conversation was not recorded in the notes. Streffacio never asked [REDACTED] for a copy of the paper that he saw with the Respondent's name on it at Clove Road. He did however obtain all of the Respondent's medical records from [REDACTED] with a HIPAA release.

Streffacio stated that Carbone was the one who attempted the data transfer and that at some point he (Streffacio) came to learn that the transfer had not worked. Streffacio never vouchered the recorder itself to preserve it, nor has he looked for it since.

On re-direct examination, Streffacio stated that his belief is that after the transfer attempt the date is no longer on the recorder itself anymore.

On re-cross examination, Streffacio clarified that after he found out that the transfer had not worked, he checked the recorder and the information was not there.

When asked by the Court, Streffacio stated that according to his records, those individuals who were just using creams or gels exclusively were never brought up on

charges. The reason for the change in the Respondent's status was because of the fact that he was using injectable human growth hormone. When asked if he thought using creams and gels is an appropriate use of testosterone, Streffacio stated that the FDA only approves up to 1% cream that is made by a company and is called AndroGel.⁶ It comes in a pre-packaged box and is available at CVS with a prescription. He said that they also offer a 5% for females who need that for hormone replacement therapy, and that is all they allow. He said, 'Anything above 1% from what my understanding was, is too much, 10% percent, 12 5% is a lot.'

Deputy Chief Thomas Mason

Deputy Chief Thomas Mason has been a member of the Department since January 1986 and has been assigned to the Office of the Chief of IAB since 2005. In 2009 he was promoted from Inspector to Deputy Chief.

Mason testified that Group 1, Group 25, the Intelligence Section and the Investigative Review Unit of IAB are all under his direct command. He was aware that Group 33 was conducting an investigation involving the improper use of steroids and he became aware that the Respondent's name had come up as a part of it when he was informed by Campisi that the Respondent had been in contact with him. Mason was also aware that IAB was involved in a search warrant execution at Lowen's Pharmacy on October 15 and 16, 2007.

Mason said that when Campisi told him the Respondent wanted to speak to IAB, an interview was set up for the morning of October 18, 2007. As far as he could recall, the people at that meeting were himself, Campisi, the Respondent, Phillip Karasyk [an

⁶ See above, Fn 5

attorney for the Captain's Endowment Association (CEA)] and possibly also a representative from the CEA. It was an informal interview and was not recorded. The questions for the interview were provided to Campisi and Mason by Carone.

Mason stated that he made notes on the questions that were provided to him. There may have been follow-up questions that are not recorded on the list of questions, and which he may not have made a note of. Regarding to the questions that are on the sheet, Mason was sure that there may be one or two answers that he did not memorialize on the sheet.

Mason explained that at some point during the interview the Respondent informed him that he was a client of [REDACTED]'s and that he had been referred to him by someone in his gym. He did not give the name of that individual. The Respondent told him his first visit to [REDACTED] was sometime in January or February 2006 and his last visit was on September 25, 2007. The Respondent estimated that he had seen [REDACTED] a total of 15 to 20 times over that period. The Respondent's first visit was at [REDACTED]'s office on Seaview Avenue, while the rest were at the New York Anti-Aging Center. The reason he went to see [REDACTED] was because when he was the Commanding Officer of the 75 Precinct, he was not feeling well and was having chest pains. The Respondent told Mason he was diagnosed with a low testosterone level and a high DHEA level and that he had been prescribed a testosterone cream and human growth hormone. The Respondent had informed [REDACTED] that he was a cop and that his levels had to remain within a normal range. He also said that he was injecting human growth hormone on a six-day cycle as well as using the testosterone cream and that these treatments were not covered by his insurance. Mason could not recall if the Respondent said whether or not he had tried to

submit it to his insurance company, or how much the prescriptions cost, but he did remember that he filled them specifically at Lowen's Pharmacy, because that was where [REDACTED] had told him to fill them

After the interview, Mason informed Carone of the substance of the interview and made a request that the Respondent sign a HIPAA release. Mason faxed Karasyk a copy of the HIPAA release and asked him if the Respondent would sign it. He did not recall if it was returned to him or directly to Streffacio or Carone.

Mason was also present at an official Department interview with the Respondent on January 14, 2008. He could not recall offhand if it came up during that interview, but Mason knew the Respondent was aware of the fact that Lowen's Pharmacy was raided by state investigators. The basis of the knowledge was the conversation Mason had with Campisi, after the Respondent requested an interview subsequent to the article in the New York Daily News. Mason testified that to his knowledge, the Respondent made no inquiries to him or to his office as to whether or not it was appropriate to continue to patronize Lowen's Pharmacy after it was raided by state investigators in May 2007.

On cross-examination, Mason confirmed that his testimony regarding the informal interview with the Respondent was not a verbatim account of what was said, and that when he was taking notes at the time of the interview he was not making an effort to capture what was said word for word by all of the participants. He told the Court that as far as his testimony, having reviewed his notes, he had a recollection of what was said during the interview, but that without the notes he could not have given every answer that he gave. Mason said that he reviewed those notes prior to coming in to testify.

Mason had asked that Streffacio prepare questions because he had not been

intimately involved in what had been going on in the investigation up to that point Mason reiterated that he had asked some questions on his own and did not write them or their answers down, "which would generally lead me to believe that they were inconsequential." He also did not write down any of the questions that were asked by Campisi or any of the other participants, but he may have written things down based on the Respondent's answers to those questions. Having looked at his notes, Mason believed he wrote down where the Respondent actually had the blood drawn and that the Respondent had been a "gym guy" since the age of 22, although the questions that led to those answers are not recorded in the notes. He did not remember any of the questions that were asked by any of the participants that are not recorded in the notes. He vaguely recalled discussing that Lowen's was one of the few compounding pharmacies in the city.

Mason reiterated that the Respondent did not tell him how much his prescriptions cost, but when asked to read his notes they indicated that the Respondent had in fact told him that it cost about \$500 a month. The Respondent had not hid the fact that he was seeing [REDACTED] nor that he was receiving prescriptions for testosterone and human growth hormone. The Respondent told him he had started seeing [REDACTED] because he was having chest pains, was not feeling well, was feeling faint and that the Respondent told him without hesitation that [REDACTED] had advised him to go to the Lowen's Pharmacy to get his prescriptions filled. Mason said that the Respondent answered all of the questions asked of him during the interview. Mason had no information that the Respondent did not have any of the symptoms that he had described.

Mason testified that he knew that the Respondent was aware of the investigation because Campisi told him that the Respondent had called and said he read

about it in the New York Daily News

When asked by the Court, Mason clarified that the Respondent had not in fact told him the price of the prescriptions themselves. What the Respondent did state and what was reflected in the notes, was that the overall cost of the office visits and prescriptions were costing him about \$500 a month.

Gary A. Green, M.D.

Dr. Gary Green is a physician, internist, sports medicine specialist and clinical professor at the University of California-Los Angeles (UCLA) School of Medicine. At his practice at the Pacific Palisades Medical Group in California, Green sees patients from ages 15 to 100 with a whole range of general medical problems, in addition to seeing sports medicine issues as well. He is also the medical director for Major League Baseball (MLB), a job which entails overseeing the health and safety of MLB players, overseeing the team physicians, the athletic trainers, the health and care of the umpires and basically any medically-related issues to MLB. At the time of the testimony he had held that post officially for about two weeks and unofficially for about two months. Since 2003, he has been the consultant to MLB on anabolic steroids and performance-enhancing drugs, a position which he still holds. Green is also a team physician for Pepperdine University and for UCLA Intercollegiate Athletics. He directs the UCLA Intercollegiate Drug Testing Program, is on the Medical Advisory Committee for the California Interscholastic Federation (which oversees the health and safety of high school athletes in California), is on the Advisory Board for the United States Soccer Federation and is at the UCLA Olympic Analytic Laboratory performing research in drug testing and performance-enhancing drugs.

Green attended the University of Pennsylvania and did his medical training at Hahnemann University in Philadelphia. He completed an internal medicine residency at the Medical College of Pennsylvania and after he graduated, he became a team physician for the University of Delaware before he went to UCLA. He is licensed to practice in California.

Green has written approximately 20 or more articles that have appeared in peer reviewed journals, approximately 20 book chapters and probably another 20 articles in non-peer reviewed medical publications. He has published articles on drug testing methods for various substances such as erythropoietin, dietary supplements and testosterone, as well as numerous review articles with respect to the various drugs that athletes use and abuse for performance enhancement. He has also written human growth hormone articles relative to their abuse by athletes and the effect they have on athletes. In terms of being involved in testing anabolic steroids, Green was actively involved with that at the UCLA Olympic lab, and has directed the UCLA Intercollegiate Athletic Program drug testing program since 1989. He chaired the National Collegiate Athletic Association (NCAA) Drug Testing Program for five years, overseeing 10 000 drug tests per year, and is currently involved with the drug testing for major and minor league baseball. He is board certified in internal medicine as well as in primary care sports medicine.

Through his work at the UCLA Lab, Green has participated in several studies involving testosterone. With regard to human growth hormone, he has written several review articles on human growth hormone, chaired an international conference on the subject in 2009, was the guest editor of a journal that was solely devoted to human

growth hormone and has given lectures around the country with respect to the effects of human growth hormone and drug testing in athletes. Green said that he has never treated any patients with human growth hormone because it occupies a very special place in the United States Code, 21 U S C 333 (e) which specifies that human growth hormone can only be given for a very limited number of indications. He said that there are approximately eight of them, including pediatric growth hormone deficiency, adult growth hormone deficiency, maintenance of adult growth hormone deficiency, chronic renal failure, Prader-Willi Syndrome and HIV wasting states. Green testified that these are very narrow indications that most physicians in primary care would never see.

Green has testified in several different cases and judicial proceedings regarding the use of anabolic steroids and performance-enhancing drugs. In addition, he has also testified several times in front of grand juries through the Department of Justice regarding anabolic steroid use and worked in judicial proceedings with the Drug Enforcement Agency (DEA) in two operations, Operation Gear Finder and Operation Raw Deal. Both of these operations helped stem the flow of illegal anabolic steroids into the United States. He received a commendation for Operation Raw Deal. Green was declared an expert when he testified. He has worked as an expert on other matters as well, including less formal matters regarding anabolic steroids and their importation, effects, manufacturing and the packaging of those types of drugs. In addition to the NYPD, Green has worked with other departments in interpreting drug testing results and in designing education programs to deter officers from using anabolic steroids. He stated that he has also written an article in one of the police chief journals and gave a talk at the International Association of Chiefs of Police regarding anabolic steroids and their use in

police departments

Green testified before the California State Senate several years ago regarding the use of performance-enhancing drugs and drug testing in high school athletes. He has been in front of Congress several times, (although he has not testified in front of them) and he worked with Senator Mitchell on the Mitchell Report for MLB.

On *your dire* examination, Green stated that the percentage of his practice involved in treating patients with testosterone deficiency is probably not 20 percent, but that the evaluation of patients with potential hormone deficiencies is probably about that. Green said that he has approximately 200 patient visits a month and of those 200 patients, maybe five to ten patients, depending on the month, are under treatment for hormone deficiency. Green estimated that he probably wrote a hundred or more prescriptions for some form of testosterone replacement in the past year, including patients who needed refills. He affirmed that in general, patients who are getting testosterone replacement need prescriptions on a regular basis.

Green acknowledged that when he functions as a consultant to MLB, the NCAA, the UCLA Olympic Laboratory, the DEA, the Department of Justice and the various sports teams that he works with, his work mostly concerns the abuse of anabolic steroids and performance-enhancing drugs. When he lectures, part of the lecture concerns how athletes and others abuse substances. He does not regularly lecture on treating individuals with testosterone deficiency. He did point out that these drugs do have legitimate treatments and so in all of his writings and lectures, that part is included.

Green first affirmed that the majority of his professional activities involving anabolic steroids and performance-enhancing drugs involved the abuse of those

substances He then clarified this and said that it would not be fair to say that the majority of work he does in that area is concerned with the abuse and misuse of these drugs for performance-enhancing purposes He stated that the other part of it involves granting therapeutic use exemptions and evaluating each case individually to decide if there is a legitimate reason for that athlete being able to use these banned substances in medical practice Green testified that he spends a tremendous amount of his time evaluating exactly that and so, 'My professional time is spent on the appropriate use of these drugs

Green confirmed that the organizations he considers exceptions for are all sports organizations He then stated that not all of the drugs are banned because they are believed to have an effect on the performance of athletes Some are banned for other reasons as well

The Court declared Green an expert in the field of anabolic steroids, performance-enhancing drugs and in internal medicine

Upon further *voir dire* examination as to Green's *curriculum vitae* (DX 6), Green acknowledged that although it lists medical licenses in Pennsylvania as well as Delaware, those are no longer active He explained that he thought the typical and courteous thing to do is list those, in case anyone ever wanted to do a search on them He also acknowledged that although he is listed as a lecturer in Drug and Alcohol Education, Family Medicine, Block Rotation, Sports Medicine and UCLA Family Health Center, he has not held that position since the 1990s, when the family medicine curriculum changed What it should say, is that he lectures to the sports medicine fellows He also has listed that he is a preceptor for the Family Medicine Clerkship for MS-III, MS-IV UCLA

School of Medicine and lists himself as Preceptor Doctoring I UCLA School of Medicine He said that he has not held these positions since 2004 and should have updated their status on his résumé He did not recall having had these errors pointed out to him during a deposition in 2008, but stated that it may have happened

On continued direct examination, Green explained that testosterone is a class of androgenic anabolic steroids Anabolic steroids build up the body substance and androgens create male secondary sex characteristics Due to their potential for abuse they are classified as Schedule III drugs in the United States Typically, testosterone ranges are determined by looking at two standard deviations from the mean, which would encompass 95 percent of the normal range of people Each laboratory determines their normal ranges based on their quality control positives and negatives so every lab is slightly different depending on their instrumentation

Green stated that testosterone deficiency is simply someone who falls below the normal levels of testosterone, but said, "I think what we really mean with testosterone deficiency is somebody who is also suffering from symptoms relative to low levels of testosterone" In men, it could affect their libido or sexual drive, it could affect sexual potency like erectile dysfunction, there could be a loss of muscle mass, and there could be changes in hair patterns Testosterone deficiency is a clinical diagnosis, but the first thing would be to do hormonal analysis, "in order to check testosterone levels, to check FSH [follicle-stimulating hormone] and LH [luteinizing hormone] levels, to look at other hormonal axis" Green explained that a diagnosis would look at feedback loops, at other hormones with other explanations and might, for instance, include a prostate exam and an examination of the testicles (a small state could indicate a lack of testosterone) Green

said that he does treat patients with testosterone deficiency

Green testified that a differential diagnosis for testosterone deficiency would be very different depending on a person's age but that in general the primary cause is testicular failure, i.e. the testicles not producing enough testosterone. It can also have central causes (pituitary not giving signals to produce more testosterone), or testosterone suppression. A lot of drugs and dietary supplements, as well as anabolic steroids, can suppress testosterone by making the body think it has enough, when it does not. Green said that testosterone levels fluctuate throughout the day and so a full and proper diagnosis, taking into account all potential causes of a potential symptom, is important.

Green testified that with a doctor's prescription a patient can be given anabolic steroids. He noted, however, that there are very rigid prescribing regulations, many of which were established by the 2004 Anabolic Steroid Control Act. Only certain forms are allowed to be prescribed, it cannot be given by pill because the prescriptions in the United States are broken down if taken orally and are not absorbed. The options are basically shots (intramuscular injections of an oil-based testosterone), a skin patch that needs to be applied daily, a gel that is applied to the skin, or a buccal preparation which is put up underneath and above the second incisor tooth against the gum and gets absorbed slowly throughout the course of the day.

Green testified that testosterone is a form of anabolic steroids and that testosterone is generally used to replace what is missing in a case of testosterone deficiency. The reason that testosterone and anabolic steroids are so tightly controlled is because they have a potential for abuse. Studies have shown that when a person takes testosterone or other anabolic steroids in very high doses they can increase muscle mass

for performance enhancement, instead of normal therapeutic uses to bring the person back to where they would be within the normal range A normal therapeutic dose of testosterone would depend on the route of administration For an injectable form, depending on the person's size, it might be about 200 milligrams intramuscularly every two to three weeks For a patch it might be a five or ten milligram patch once a day, for gel it might be about five grams a day and for the buccal testosterone it is one tablet applied to the gum every 12 hours

Green said that most of the risks associated with taking testosterone depend on the dosage, the higher the dosage, the higher the risks There are risks associated with heart disease and with adverse effects on the prostate, liver and kidneys It can also affect the brain in terms of causing people to commit very aggressive acts There is also the risk of dependence and addiction, as well as the possibility that one may suppress somebody's own testosterone levels If someone is of childbearing age it can suppress fertility and there have been cases of people coming off of them and developing severe depression There are several ways to detect anabolic steroid use In terms of sports drug testing, urine-based drug testing is used

Green testified that human growth hormone is a protein secreted in the brain and circulated to the rest of the body It is very important in regulating overall growth in a person Human growth hormone cannot be detected through traditional urine-based drug testing, although a new type of blood test has been found to be successful in detecting it According to Green there are eight diagnoses that are legally available to be prescribed, which he said is very unusual For every other drug available to physicians, they can give off-label indications if they decide to, but human growth hormone can only be prescribed

for those diagnoses that the Department of Health and Human Services has established
Anti-aging or muscle enhancement is not a diagnosis for a valid prescription

Green explained that human growth hormone cannot be given orally and that the only way it can be given right now is by subcutaneous injection into an area such as the thigh or the abdomen similar to how a diabetic would inject himself with insulin

Green stated that DHEA is a pro-hormone, when the body makes testosterone or other hormones it starts from the cholesterol molecule goes through different reactions, eventually gets to DHEA and then eventually to testosterone DHEA is legally sold as a dietary supplement in the U S and is purported to have many different uses, but in general it can increase the testosterone levels in a person, suppress natural testosterone and can be detected with drug testing Because the dietary supplement industry is not very well-regulated, DHEA can often be contaminated with other types of androgenic supplements

Green told the Court that IGF-1 (insulin-like growth factor) is a substance that is associated with human growth hormone use If someone takes human growth hormone his IGF-1 levels go up It is unclear if IGF-1 is a marker of human growth hormone use or if it is a mediator and works on its own According to Green, a lot of anti-aging clinics will erroneously measure IGF-1 and if it is low, prescribe human growth hormone The Department of Health and Human Services has qualified that IGF-1 levels are not an adequate measure of growth hormone levels and should not be used as a way of prescribing growth hormone FSH and LH are hormones that help regulate testosterone levels in men's bodies When testosterone levels are low FSH and LH are correspondingly high in order to tell the body to produce more testosterone These are

not always perfect markers and that everyone can be individual in that regard

Green had an opportunity to review materials relating to the Respondent's case, specifically those materials provided by the Department, including the Respondent's interview, medical records and laboratory tests from Lucente, a letter and some medical records from Gordon and a few pages of records from Gordon. He also said that he had done some work on his own. Prior to receiving the materials from Gordon, Green wrote a report and submitted it to the Department with regard to a review of the materials and a summary of his findings with respect to the course of treatment that was provided to the Respondent (DX 7). At that time he did not have access to the blood tests from January 16, 2006.

In writing the report, Green came to the conclusion that the Respondent had been prescribed testosterone inappropriately. Although he had not examined the Respondent personally, he felt that there were other alternative explanations for the symptoms he presented, based on his medical records and his testimony. The Respondent's symptoms could be associated with anxiety, depression and other psychiatric diagnoses as well, along with some other physical diagnoses.

Green acknowledged that after he submitted his report, he had the opportunity to review the Quest Diagnostics lab report dated January 16, 2006 (RX D). Having reviewed that report, his opinion regarding the Respondent's treatment was not changed. Green explained that although the testosterone level was listed as being low at 215, at the time of collection it was 1845 hours, which is late in the day and when he would expect it to be low. In addition, the Respondent's DHEA level was relatively high and someone taking DHEA, whether knowingly or unknowingly, could suppress their testosterone

Green thought the Respondent's situation at that time could in fact be a case of testosterone suppression. Green also pointed out that the Respondent's IGF-1 level was also well within the normal limit and although that is not used as a standard for growth hormone deficiency, it was not even low. Green did not see any justification based on this for testosterone treatment or for human growth hormone treatment.

Green had an opportunity to review a letter dated September 2, 2009, submitted by Gordon on behalf of the Respondent with respect to this case. After having reviewed the letter, Green's opinion regarding the Respondent's course of treatment did not change. He disagreed with the facts as stated. That is, he disagreed that the symptoms the Respondent was suffering from were attributable to testosterone deficiency. He also pointed out that this letter was written two years after the treatment by [REDACTED] and that if somebody was undergoing testosterone treatment for several years their axis would very likely be suppressed. The person might therefore be testosterone deficient not because they naturally are but because they have been artificially suppressed by the inappropriate use of testosterone. Green said that while the Respondent may be testosterone deficient, the most likely reason is that he has been suppressed, because he has been taking testosterone for many years artificially.

Green said that he had the opportunity to buy and read a book that was written by Gordon entitled, Testosterone Deficiency The Hidden Disease. He said that there were two things in the book that he agreed with, namely the fact that the misuse of anabolic steroids by athletes and for performance-enhancing is gross, dangerous and unhealthy, and the fact that, as Gordon stated in the preface to the book, nothing in the book is based on scientific studies. Green stated that Gordon's book is based on anecdotal reports of

patient care and that nothing in the book is based on scientific studies which in medicine would be the gold standard, i.e., placebo-controlled, double-blind studies

Green testified that he had the opportunity to review the medical records submitted to the Department in September 2009, on behalf of the Respondent and that having reviewed them, his opinion regarding the course of treatment for the Respondent has not changed

Green stated that he had an opportunity to look at lab reports submitted by Gordon on behalf of the Respondent on July 13, 2009. He said that the Respondent's testosterone level in those reports is high at 911, which is greater than the reference range, the top normal range. His free testosterone was also high at 5, again higher than the reference range. These facts suggested to Green one of two things: either the Respondent does not suffer from testosterone deficiency because his testosterone level is quite high, or he was taking some form of testosterone between 2007 and 2009, again because his levels were very high. In addition, his high-density lipoprotein (HDL) cholesterol, or good cholesterol was 33 (the normal range for this laboratory is less than 40), while in the past it had been in the 40s or high 40s. Green said that his HDL had dropped consistent with some type of anabolic steroid use. His testosterone level was high consistent with testosterone use. Green concluded that the only possible interpretations in his opinion are that either the Respondent was taking testosterone before he saw Gordon or that he is truly not testosterone deficient and does not need excess testosterone. Either way Green opined, when the Respondent saw Gordon on July 13, 2009, he certainly did not have testosterone deficiency, and his testosterone level was above range.

Green also reviewed the Respondent's lab reports which were submitted by Gordon on the Respondent's behalf for urine that was collected on September 8, 2009. He said that the urine was collected at 12 noon, again not an early morning sample and that his total testosterone was 332, which would be within normal limits for that lab, although on the low limits of normal. He testified that level would not be considered low testosterone and that at least based on the above-reference laboratory tests, there is no indication that the Respondent was suffering from testosterone deficiency.

Green stated that upon reviewing the handwritten notes from Gordon relating to the Respondent, Gordon was giving the Respondent testosterone. Based on those notes Green did not think that there was any indication that the Respondent was suffering from testosterone deficiency. Green also said that as opposed to the previous doctor (██████) who was giving the Respondent a very high potency testosterone gel, this time the patient was receiving Depo-Testosterone, which is an oil-based testosterone that is injected into a large muscle and is then slowly released over the course of a few weeks. The typical therapeutic or replacement dose is about 200 milligrams every two to three weeks, but the Respondent was receiving 400 milligrams every two weeks, which would be much more than the typical dose. There was one point when it was increased to 500 milligrams which again would be in excess of what would typically be given for a replacement dose.

Upon cross-examination, Green agreed that Depo-Testosterone is testosterone cypionate. He also agreed that the manufacturer of the medication says that the replacement dose is 50 to 400 milligrams administered every two to four weeks. He clarified that 200 would be the standard dose and that 400 would be absolutely the top end and he said that this dosage was for a hypogonadal male, a male who is not

producing enough testosterone These are not the same kind of doses that [REDACTED] was prescribing, [REDACTED] was prescribing a gel form of testosterone which did not have a package insert because he was sending it to the pharmacy that was compounding it He said that the typical insert for what [REDACTED] was prescribing would be a 1% testosterone gel, while what [REDACTED] was prescribing was actually 10 to 12 5% A package insert for intramuscular testosterone cypionate was received in evidence as RX I

Green testified that his practice is a clinical affiliate of UCLA and that if somebody has an insurance plan that they are under through the UCLA Medical Group, they see patients on their behalf He does work for the UCLA Olympic Analytical Lab and reiterated that he is a team physician for Pepperdine University and also works for MLB He spends about 10 to 19 hours a week on patient care, 10 to 19 hours a week on research and about one to nine hours a week on teaching While none of the 132 lectures and presentations listed on his resume indicate that they deal specifically with the care and treatment of patients with testosterone deficiency, almost every lecture that talks about anabolic steroids does list talking about the therapeutic uses of those drugs

Green disagreed with the implication in Williams Textbook of Endocrinology that the phenomenon called "roid rage" does not exist Green said that he is familiar with the literature and the studies on that topic and that it is not a settled issue He added that " in ethical controlled studies, you can't often replicate what athletes and bodybuilders are taking And the problem comes, is that, for instance, for me to ethically do a study to recreate what people are doing in terms of very high doses would never get through any ethical review board '

Green agreed that the Respondent had a few of the symptoms that could be

symptoms of testosterone deficiency He pointed out that in his interview the Respondent denied having low libido, while [REDACTED] s medical records said that he did have low libido There was a discrepancy in regards to the Respondent's reduced muscle strength Green acknowledged that the Respondent's chest pain, anxiety, stress and depression are all things that could have been symptoms of testosterone deficiency, however he said that he could not answer definitively from the partial record whether or not the Respondent had high cholesterol at the time that he was seeing [REDACTED]

Green could not recall the first time that he was contacted by the Department, but he said that he did not think it was specifically about the Respondent There were several officers that he was asked to review initially and he believed that the Respondent was one of them He believed the first person he spoke to in the Department was Assistant Department Advocate Bland, but he was not sure Green said that he was asked to review the records and the interview He was asked to come to an independent conclusion concerning whether or not this was a legitimate medical indication for the drugs that he was taking 'No one ever mentioned the word was a steroid abuser, it was come up with – read the facts of the case and determine whether this was a legitimate medical prescription ' Green had never heard of the Respondent before he was contacted by the Department and had no knowledge at all as to whether or not he was a steroid abuser

Green said that he was told that the records he received were [REDACTED] s medical records for the Respondent He never spoke to nor made any attempt to speak to [REDACTED] about the Respondent and no one ever told him that he could not do so He also never examined the Respondent, nor was he ever asked to, although no one told him that he could not do so He did not think an additional examination of the Respondent would

have been the preferable way to determine whether or not what [REDACTED] gave him were legitimate prescriptions and treatments for him

Green agreed that the original records he received from the Department did not include the blood test from January 13 2006 It was based on those records that he wrote his April 2008 report He did not make any effort to get access to the information from that blood test since he did not know it existed Even though he read about it in the testimony, sometimes patients do not recall correctly and so Green had no way of knowing whether or not there was an actual blood test No one told him that he should not follow up on the information that he had gotten from the testimony and Green has subsequently seen the January 16, 2006 blood test from Quest Diagnostics Having looked at [REDACTED]'s records (RX G) and compared them to the lab report, Green noted that the Quest Diagnostics report had more information on it and was therefore adequate enough to interpret the results, while [REDACTED]'s records would not be

Green agreed that based on the January 2006 reports the Respondent's total blood testosterone levels were below the reference range (the cutoff for low was 260 and the Respondent was at 215), as were the free testosterone levels (the cutoff was 50 and the Respondent was at 38.5) Green acknowledged that in a general sense, free testosterone is actually the measure of testosterone that causes things to happen He also acknowledged that in August 2007 the Respondent's free testosterone level was at 27.5, although he said he would have to see more information to be sure that [REDACTED] was still treating the Respondent at that time

It was Green's understanding that [REDACTED] did not prescribe testosterone for the Respondent until after he had taken his blood in January 2006 He was not sure if it was

a cream or a gel, and he had never seen a sample of it, because it is not a prescription-type drug, but rather a compounded drug. Green said, "I mean it's not a pharmaceutically manufactured drug that you can write a prescription for. It had to be compounded because it was ten times the dose that you can get in a prescription drug."

Green stated that based in the official Department interview that he had read, the Respondent told the interviewer that was the first time in his life he had ever used anabolic steroids. Green said that the only thing he had which contradicts that, is that the Respondent's DHEA level was fairly high and this would suggest that there may have been something that he was taking that was suppressing his testosterone levels at that time. DHEA is a precursor for testosterone and so if a person takes something that gives elevated DHEA levels or other types of male hormones, they can suppress their own testosterone production, making their testosterone artificially low. He said that in the interview, the Respondent denied taking anabolic steroids or any DHEA at that time and that other than the high DHEA level there was nothing else that contradicted the Respondent's testimony.

Green stated that he believes that the Respondent was taking the testosterone that was prescribed by [REDACTED] in supraphysiologic doses, or for performance-enhancing purposes. When asked if the performance he thought the Respondent was seeking to enhance was the performance of a police officer, he said that, "No, it could be for many things. It could be for his physical appearance, whatever it was, but this was not a treatment, I did not feel this was a treatment of testosterone deficiency." Green said that when he referred to supraphysiologic doses he was referring to the fact that on two occasions, the Respondent's blood test levels of testosterone were more than double the

normal amount, the fact that he was using a preparation that was ten times more than he would have for replacement doses and the fact that he was also taking human growth hormone in combination with that Green said there is some evidence that human growth hormone enhances performance He also said that he had made no effort to find out whether or not the Respondent was a bodybuilder

Green said that he understands that the Respondent receives intramuscular injections of testosterone cypionate every two weeks He said that a slug of Depo-Testosterone is gradually absorbed over the course of two weeks while the topical preparation is administered everyday because it is absorbed relatively rapidly and it dissipates relatively rapidly Green explained that when he said it absorbs rapidly he was talking about studies that have been done with the pharmacological brands of testosterone gels and studies he has done himself with those gels and patches The cream that the Respondent was prescribed by [REDACTED] was compounded by a compounding pharmacy, a pharmacy that makes up medications to order that are not generally available from major pharmaceutical companies Green never had the cream that the Respondent was given analyzed, nor had he suggested that it would be a good idea to get a sample of it and see what is actually in it Green said that when he says the amount of testosterone in the mixture was 10% that is based on what [REDACTED] prescribed [REDACTED] seemed happy with the results that he was getting and so it appears that [REDACTED] felt very comfortable with the pharmacy in that they were giving him the correct doses that he was asking for Green acknowledged that at one point the Respondent's blood levels went several points high and then came way down

Green stated that the Department was paying him, he believed, \$300 an hour for

the review work that he had done and \$400 an hour for in-court testimony. He said that at the time of his testimony he had already received about \$4,000.

Green acknowledged that cortisol is another endocrine hormone and that it has diurnal fluctuations (i.e., it varies at different times of day). He also agreed that the lab asks for the time of collection after every test is done and that all of the labs that he knows of have different reference ranges for cortisol depending on the time of day. Having seen the report declaration of April 2008 (DX 7), he agreed that the numbers from the January 16, 2006 blood test, that he was now aware of, would make the chart more complete, as would the August 28, 2007 entry in [REDACTED]'s records showing a free testosterone level of 27.5. Green acknowledged that there is an error in the first column of the chart, where the chart says 'percent free testosterone'. It should probably just say 'free testosterone'. In preparing this chart Green had relied on the records that were given to him at that time and which he had been told were [REDACTED]'s records. According to [REDACTED]'s records the prescription that was given to the Respondent for testosterone was a 10% gel and that in his official Department interview the Respondent described the substance that he was rubbing on his arms as a "white cream". Green did not do anything to establish whether the Respondent had been prescribed a gel or a cream. He testified that [REDACTED]'s records indicate throughout the entire report that it was a 10% gel and at no point does it say that it was a 12.5% gel (RX C).

Green acknowledged that his chart showed that on October 31, 2006, there was a total testosterone level of 2162. Then a little over two months later on December 5, 2006 there was a total testosterone level of 351. Working under the assumption that the Respondent was using the gel or cream the same way throughout, Green listed patient

noncompliance as one possible explanation for the drop As a second explanation, he said that if the Respondent had not used the testosterone for even just one day beforehand it may have gone down because it is relatively short-acting in the gel form When asked again to assume that the Respondent had never missed any days and had done exactly as [REDACTED] had prescribed, Green said that he did not have an explanation as to why the level went from 2162 to 351

Green said that he has no familiarity with Lowen's Pharmacy, although he knows that it was the compounding pharmacy at which the Respondent was told to fill his prescriptions He also he was aware that [REDACTED] had pled guilty to taking kickbacks from Lowen's Pharmacy Green acknowledged that a compounding pharmacy prepares medication that is not otherwise generally available from major manufacturers and that this is what makes them different from a Walgreens or a CVS In this case they were making a cream or a gel for use by the Respondent, based upon a prescription written by [REDACTED] and that in order to do so, they had to take some sort of cream or gel base and add an amount of testosterone to it General testosterone is absorbed fairly well through the skin It appeared to Green that the Respondent received multiple prescriptions compounded at different times from the same pharmacy and that his levels were quite high previously and then were quite low Without actually analyzing the cream or gel there is no way to tell with certainty what the strength was

As a doctor Green stated, he prescribes medication all the time for many different things and it is a common occurrence for patients to question the dosage or strength of the medication that he prescribes, including when they receive the medication for the first time Green acknowledged that according to the official Department interview the

Respondent explicitly told [REDACTED] to make sure that his levels never go above normal. Based on what Green has seen, most athletes and others who are using performance-enhancing drugs do not have that discussion with their doctors. He said that in general patients who are looking to enhance their performance are looking to raise their levels of anabolic steroids as high as they can.

Green said that very rarely the symptoms of growth hormone deficiency can include fatigue, lack of energy, social isolation, poor concentration and memory loss. Having been shown that statement in Williams Textbook of Endocrinology, he acknowledged that this would be the case, in the case of severe growth hormone deficiency. He stated, "Again, if you read this, it says particularly in patients with severe growth hormone deficiency and long-standing childhood onset growth hormone deficiency." He reiterated that this would be in people with diagnosed growth hormone deficiency and stated that although [REDACTED]'s chart indicated growth hormone deficiency, "he indicates that but it was not diagnosed correctly." Green believed that [REDACTED] was an osteopath who did not have any specialty training and was certainly not an endocrinologist. He did not know for certain that [REDACTED] did not have advanced training in endocrinology.

Green said that he agrees with the Williams Textbook that signs of growth hormone deficiency can include increased fat mass especially around the waist and decreased lean body mass in someone who has the disease. In making the determination as to whether or not someone has the disease a small part that a doctor considers, is whether or not they have the symptoms of the disease. Growth hormone deficiency can increase blood livers result in reduced exercise capacity (mostly in children but also in

adults) and can increase cardiovascular risk. Testosterone deficiency can also cause body composition changes similar to those seen in growth hormone deficiency. Green agreed with the Williams Textbook that growth hormone replacement provides additional positive effects on body composition beyond that seen with just testosterone treatment in individuals with growth hormone deficiency. He also said that it can reduce belly fat and bad cholesterol, even in patients who are already receiving sex steroids such as testosterone. He said that they can actually even increase when combined with low levels of testosterone, which is typically what happens when people are abusing these drugs.

Green agreed that growth hormone is a highly regulated substance and noted that 21 U.S.C. 332 subsection (e) provides that doctors cannot prescribe growth hormone except for recognized medical conditions and that one of those conditions would be growth hormone deficiency (RX K). He agreed that testosterone can have adverse effects on the prostate and stated that there is evidence that testosterone replacement in men diagnosed with prostate cancer can exacerbate the condition. He said it was unknown as to whether the therapy can cause the cancer. He also agreed that the Williams Textbook is prepared by a very large team of endocrinologists.

Green said that in his practice he has experience in prescribing topical testosterone and that he has used injectable testosterone as well. Green said that if he has a patient that has testosterone deficiency he will offer him the various methods of delivery and go over the pros, cons, risks and benefits of each. He will then make a decision together with the patient as to what therapy they opt for. He guessed that injectable testosterone costs less than topical testosterone since it has been out longer and that there may be some cases where a tolerance develops and topical testosterone loses its

efficacy over time Green reiterated that testosterone is a Schedule III drug in the United States and said that he was unaware that it was a Schedule II drug in New York State

Green testified that there were few things he agreed with in Gordon's book and that he felt the "jury was still out" as to whether or not testosterone causes prostate cancer. When Green treats patients, he does not make a distinction between a normal level of testosterone and an adequate level of testosterone and he has never read any studies nor talked to any doctors that made such a distinction. When he was talking about levels, Green was referring to those levels that are recorded by labs as reference levels. There are people with low normal levels who have symptoms that can be treated with hormone replacement.

On re-direct examination, Green testified that in general the patients who pay in cash are the ones that do not have insurance. Unexplained tiredness could be a symptom of testosterone deficiency or one of many many other possible causes. Unexplained low energy, depression, poor concentration, weight gain, high cholesterol, reduced strength and reduced muscle strength are all very nonspecific and could also be symptoms of things other than testosterone deficiency. Green said that as a physician he would start off with a history, looking at all the different potential systems, doing a thorough panel of laboratory results and then eventually come to a conclusion as to what the patient could be suffering from. He said that minimally he would do a testicular exam, which did not seem to have been done in this case. The examination done by [REDACTED] was clearly inadequate to make that diagnosis as there were not, for instance testicular or prostate exams done and some of the laboratory tests were also inadequate.

Green said that when reviewing the medical records that he got from Gordon he

did not see an indication that a testicular exam was done, nor was there blood pressure checked on most of the visits, "or vital signs or things that we would typically consider part of a typical patient visit to the doctor "

When asked to define what he meant by performance enhancement, Green said that he would define that as, "non-therapeutic use So again, clearly given the dosages he was given, his high levels of serum testosterone and the fact that he was also getting growth hormone deficiency in combination with it, leads me to believe this was not a therapeutic use of the drug " When asked if performance enhancement necessarily means that the person has to be a bodybuilder, Green reiterated that he would define it in the broad terms of being something that is not being used for therapeutic use, i e , to bring somebody to a normal value He said that it all comes back to making sure that there is a proper underlying diagnosis

Green said that growth hormone deficiency would be diagnosed by a growth hormone simulation test, which in his opinion is probably the "gold standard" nowadays IGF-1 levels, while probably not adequate in terms of diagnosing someone with growth hormone deficiency, are a crude way of doing so Green said that in addition, in an older patient, he would probably be doing a more thorough evaluation including a potential MRI (magnetic resonance imaging) of the brain, looking for other hormones that may be abnormal He said that "it's not a common diagnosis for an older person to have acquired growth hormone deficiency without some underlying cause "

Green agreed that under 21 U S C 333 subsection (e), adult growth hormone deficiency caused by pituitary tumors would be one of the very specific conditions established by the Secretary of Health and Human Services for which growth hormones

would be appropriate. He reiterated that if he had someone with growth hormone deficiency he would probably do an MRI of the brain to make sure that there were no pituitary tumors. Green said that having reviewed [REDACTED] s records there was nothing in there that would qualify the Respondent as needing growth hormone. He also said that having reviewed Gordon's records, he did not see that Gordon had ever prescribed growth hormone to the Respondent.

On re-cross examination, Green testified that he did not attach any significance to the fact that after the Respondent took the testosterone all of the symptoms got better, because as he put it, "those symptoms did not get better." According to the records, including both [REDACTED] s and Gordon s records, as well as the Respondent's testimony, he still had those symptoms. Green reminded the Court that at one point one of the investigators had mentioned to the Respondent that he had lost weight and that Respondent had said that would have happened anyway. Green believed the Respondent's cholesterol levels remained relatively stable during the treatment with [REDACTED]

[REDACTED] He said that although the Respondent reported having a lot more energy, not being constantly tired, not feeling depressed and sleeping and concentrating better, "in Dr Gordon's notes in the first six months of treatment most of those things stayed about the same. Green never made an effort to ask the Respondent about any of those things, but he had just relied on the medical charts."

Green reiterated that neither [REDACTED] nor Gordon had performed a testicular exam and said that there were many reasons why a doctor would want to do one. One thing he might look for is some sort of mass that should not be there and he agreed that if a patient had been instructed and knew what it was that they were looking for, the patient could

perform a self-examination He stated, That is not a substitute for a physician doing an examination "

Green acknowledged that there is such a thing as idiopathic growth hormone deficiency, meaning that the cause is not readily apparent, as opposed to growth hormone deficiency caused by a pituitary tumor He said that idiopathic growth hormone deficiency is a diagnosis that would permit a physician to prescribe growth hormone

On re-direct examination, Green was shown Gordon's medical records He told the Court that according to the records, on three separate occasions, November 9, November 23, and December 7, 2009 the Respondent was given 400 milligram injections of Depo-Testosterone On December 21, 2009, with respect to the symptoms that the Respondent was complaining of that day, Green said that Gordon's records say, 'increased fatigue, depression, confusion, anxiety the past two days' According to the records, on January 4, 2010, after having already received a fourth 400 milligram injection of testosterone, the Respondent was still complaining of "some turn of anxiety

On re-cross examination, Green was asked to look back at the December 21 records and noted that after the list of complaints and symptoms, Gordon had written that the Respondent had probably run out of testosterone Green did not understand how that could be, because the Respondent had gotten a shot two weeks earlier Testosterone in the shots diffuses out from the injection site into the body over a two- to three-week period and Green said that he usually uses a three-week cycle Some people do in fact, do it every two weeks He acknowledged that Gordon was saying that the testosterone may have run out two days beforehand and that that was what he had ascribed the symptoms to

When questioned by the Court, Green affirmed that based on [REDACTED] s records there was a 10% gel that was repeatedly prescribed When asked if there was a problem with using a 10% solution, he said that

It's very unusual because again the pharmaceutical grade is 1%, that's done by pharmaceutical you know, it's 1% and it's a very standard type thing To go to 10% again is ten times the dosage and would be very unusual for anybody to need that much testosterone gel and so again, the only reason to go to 10% would be if you didn't think you can get enough in 1% and you want what we call supraphysiological dosing So you use a 10% gel and in other Dr [REDACTED] s cases he is going up to 15%, has to be compounded by the pharmacy So again one of the things it's important in a drug like testosterone in that there were therapeutic uses and there is supraphysiological uses So to me, my opinion, there is supraphysiological dosing from testosterone "

The Respondent's Case

The Respondent called Dr Barry Gordon, M D The Respondent also testified in his own behalf In addition, the Respondent submitted character reference affidavits from Robert Giannelli, Michael Scagnelli, Joseph Cunneen, and Albert Girimonte

Barry Gordon, M D

Dr Barry Gordon graduated Chicago Medical School in 1965 and did a medical internship, followed by a two-year residency in the area of internal medicine at the Jewish Hospital Medical Center of Brooklyn He then did one year of Hematology (the study of blood diseases) at Montefiore Hospital in the Bronx before opening a private practice in internal medicine as a primary care physician, while simultaneously going into the practice of hematology with another doctor and becoming the Chief of Hematology at Greenpoint Hospital in Brooklyn He currently maintains a Brooklyn office and a Staten

Island office and is licensed to practice medicine in New York. He has never been subject to professional discipline of any type.

Gordon testified that he became involved in the treatment of testosterone deficiency disease approximately 11 years ago, when he was called in as a hematology consult to see an anemic patient at Community Hospital in Brooklyn. The patient had lost half his blood with no obvious cause and was unable to support himself walking. Gordon said that the only thing he could think of was testosterone because testosterone gives muscle strength and it also stimulates the bone marrow to make red blood cells. He tested the patient's levels and found them very low. Gordon began treating the patient with testosterone shots and within about six or seven months the patient was walking normally and his anemia was totally gone.

Gordon said that after seeing what extreme testosterone deficiency can do, he started wondering about all of the mild and moderate cases. Including current patients. Gordon has treated approximately 1,000 to 1,200 patients for testosterone deficiency. Currently, about 80 to 90 percent of his patient population, or approximately 500 patients, are people that he is treating for testosterone deficiency. For about 50 to 60 percent of those people he is also their primary care provider while the others came to him mostly by referral from other patients and doctors.

On *voir dire* examination, Gordon acknowledged that he is not board certified in any particular area. He also said that he has not done any controlled studies with respect to testosterone deficiencies, nor has he written any articles or reviews with respect to the subject. He stated that outside of the last 11 years, during which he was treating patients for testosterone deficiency, he has no special training with testosterone deficiency other

than as an internist, because endocrinology is part of internal medicine Gordon told the Court that he is not an endocrinologist

On continued direct examination, Gordon said that he has studied testosterone deficiency quite extensively and that as a hematologist he has "far, far, far more experience with steroid hormones than an endocrinologist does." If somebody has a rare disease, an endocrinologist will treat them with replacement doses of astelone or cortisone, while a hematologist treats with megadoses of cortisone on a routine basis, in cases of ITP (idiopathic thrombocytopenic purpura) and hemolytic anemia for instance He also said that aside from his wealth of training and experience with that steroid hormone, the anabolic steroid or nandrolone, was only used by hematologists and maybe for dialysis, because it came on the market specifically for the treatment of anemia Gordon had used and prescribed nandrolone for many, many years As a primary care physician, he also routinely prescribes oral contraceptives and post-menopausal hormones, the edema hormones, which is something that an endocrinologist would not do In addition, Gordon has extensively reviewed the literature concerning testosterone deficiency

On *voir dire*, Gordon agreed that there is a difference between cortisone and anabolic steroids and that this case has to do with anabolic steroids, such as nandrolone Gordon stated that he did not prescribe nandrolone to the Respondent

On continued direct examination Gordon said that he has lectured as an expert on testosterone deficiency and testosterone replacement He said that he did so four years ago at the monthly staff meeting of the Weill Cornell Medical School Sex Therapy Clinic and subsequently about two years ago at a conference on sexual problems in women

On *voir dire* examination, Gordon said that in addition to those lectures, four or five years ago he was invited to attend a meeting of the Staten Island Prostate Cancer Survivors Group, where he lectured on testosterone and testosterone deficiency, but that he had given no other lectures with respect to any universities

On direct examination once again Gordon testified that testosterone deficiency is a disease with two basic causes the first being primary hypogonadism, which is the failure of the ovaries or the testes to secrete a sufficient or healthy quality of testosterone Gordon estimated that this accounts for 99.9 percent of cases The second cause is secondary hypogonadism, which is caused by a failure of the pituitary to secrete an adequate quantity of the hormones that stimulate the ovaries or the testes

Gordon said that most human beings develop hypogonadism at some point in their adult lives and that preventive early symptoms include physical, mental and sexual symptoms Physical symptoms include the onset of fatigue physical weakness and usually an increase in weight, especially in deposition of abdominal fat Mentally, the symptoms include the onset of chronic depression, chronic anxiety and also some confused thinking, along with the loss of self-esteem and sometimes the loss of self-confidence Sexual symptoms include the loss of libido, along with erectile dysfunction in men and orgasmic dysfunction in women, with increasing losses of libido Body pains can also be a symptom of testosterone deficiency, as can lack of concentration, sleep disturbances and a profound loss of the ability for the body to heal from injuries

Gordon said that if left untreated, testosterone deficiency can be fatal He based this on four major studies that were done during 2006 and 2007 by the University of California San Diego the Washington State Veterans Administration, Cambridge

University of England and the National Institute of Health on the subject of testosterone levels and longevity in men Gordon said that they all show a clear correlation between the length of a man's life and the amount of testosterone that he has Gordon quoted from the conclusion of the National Institute of Health study that, "low testosterone levels in males is predictive of early mortality " He also told the Court about a study done at Harvard University in 2008 or 2009 that studied the effect of Lupron, a drug that affects the pituitary gland, so that the secretion of LH and FSH is eliminated When this happens the testes stop making testosterone The study found that the use of Lupron in men with prostate cancer resulted in a 20 percent increase in mortality rate, as opposed to men with prostate cancer who were not treated with it According to Gordon, studies have also shown Lupron brings on diabetes, coronary artery disease, weight gain and osteoporosis because it exacerbates the lack of testosterone

When asked about studies concerning the prevalence of testosterone deficiency Gordon said that he was only aware of one study that came out of the University of Florida in 2006 or maybe earlier It was a peer review study which found that four out of ten men over the age of 45 were deficient in testosterone Gordon said that based on his experience they understated the case and that he thinks it is "more like 70 to 75 percent and I adhere that all - almost all of the clinical studies that have ever been done on testosterone deficiency and testosterone replacement have basic flaws because the disease has always been and continues to be grossly under-diagnosed and also poorly treated, so when you have these two factors in the studies you are not really going to get clear-cut results from the studies " Gordon told the Court that several studies have also come out that connect testosterone deficiency to depression

Gordon testified that most people begin to feel the effects or see the effects of testosterone replacement by his methods after three to five injections. Usually by seven or eight injections they are, "fairly well along the road to recovery, a real full effect about a year." The disappearance of fatigue and the strengthening effect occur relatively early and the effects on the brain occur after maybe five six or seven shots when depression and anxiety go away. There is a significant rise in self-esteem, confidence and abdominal fat starts to go away after somewhere between 10 and 14 months. Sexuality comes back fairly quickly, more quickly in men than in women and it takes an average of five or six shots in men and seven or eight shots in women for the first glimmers of the return to assert themselves. Gordon said that there are also effects on diabetes, the lowering of cholesterol and the inhibiting of vascular disease.

Gordon said that he diagnoses testosterone deficiency by the clinical symptoms, including a complete general work-up. Gordon said that the routine profile includes the lipid panel, checking the thyroid, checking vitals, checking B12 and doing what he considers to be a basic routine work-up, to look for some other possible cause of these symptoms. While each one of those symptoms is certainly a nonspecific symptom, that complex of symptoms in the absence of any other disease is diagnostic. Gordon said that while he does perform a physical as part of the diagnosis, he does not do a testicular examination. Gordon disagrees with what Green said in his testimony about the testicular examination because, "in regard to testicular tumors a man is going to know that he has a testicular tumor in this day and age." The differential diagnosis between secondary and primary hypogonadism is that in secondary hypogonadism the testes shrink to a degree. If someone had secondary hypogonadism they would also have many other abnormal

physical findings Gordon said that in his almost 41 years of practicing medicine, he has never in his life seen a patient who had an isolated deficiency of FSH and LH

Gordon told the Court that blood tests are useful in the diagnosis of testosterone deficiency in terms of confirming the clinical diagnosis by finding out that there is low testosterone and free testosterone He also differentiated between the "normal reference ranges' given by the laboratories and "adequate reference ranges " It is "normal" for a person to have lower testosterone levels as they get older and so the reference ranges given by the laboratories are consistent with normality, but there is a big difference between that range and a range that is consistent with good health He also said that it was addressed by a 2006 Harvard University study published in the Journal of Medicine, which looked at this very question Gordon said in the study 25 laboratory directors were polled and 23 of them agreed that the reference ranges for testosterone are established without clinical considerations and are not relevant to the clinical condition of the patient He also quoted studies that related low testosterone to depression and suicide

Gordon told the Court that in his practice he treats testosterone deficiency with injections of testosterone cypionate, but that other methods include testosterone enanthate injection, which was the original injectable testosterone that was FDA-approved in 1953 There are also the topical forms (most commonly patches but also gels), the buccal form and the pellet implants Gordon can only address the pellets theoretically because he has not had any experience with it, but based on his experience, when talking about topical versus injection, 'it's an amazing difference For all intents and purposes, topical applications don't work ' Gordon said that based on what men and women have told him when using the topical applications they never felt any beneficial effect on any of

their symptoms that were due to testosterone deficiency Gordon said that there were some times when their blood tests did change He said, 'I'd go so far as to say every female patient I've ever seen, female who had used AndroGel had a way, way too high testosterone levels, way in excess and with some men there was no testosterone to speak of and with some men, they also had too much'

Gordon said that the physiological replacement of testosterone

is simply to make the patient healthy, for the most part to make them as if they were in their 20's although there are plenty of men in their 20's who have a deficiency of testosterone but basically to put them at their optimal health, whereas you give supraphysiological dose you try to make them become super human

Gordon acknowledged that there is such a thing as supraphysiological doses of testosterone He heard that bodybuilders can take 2,000 to 4 000 milligrams a week, but he would think that even 500 milligrams a week would be beginning to be supraphysiological Gordon has little experience with this type of dosage treatment, but said that the effects would include enhanced muscle growth and reduced sexuality Gordon said that a 10% testosterone cream is, "absolutely not," a supraphysiological dose

Gordon told the Court that there is immense variation in the ability of different transfer agents to carry the hormone through the skin into the blood and that he has no idea what transfer agent was used by the compounding pharmacy Factors which can determine how much testosterone contained in a topical cream or gel gets actually absorbed into the bloodstream include how much testosterone is in there, the characteristics of the transferring agent and the characteristics of the skin When asked if it was possible for a person applying 10% pharmacy compounded testosterone to actually absorb less testosterone than a person applying 1% AndroGel, Gordon said, "Of course

he could Depends on the transfer agent, depends on the person ' The same person could absorb different amounts based on the transfer agent Gordon had no idea what kind of transfer agent was used in the cream that [REDACTED] prescribed for the Respondent

Gordon stated that human growth hormone deficiency is a recognized disease with medications that have been approved by the FDA, including Hematropin and Somatropin Idiopathic human growth hormone means that a person's human growth hormone deficiency is of no known cause after a careful work-up trying to find the cause Idiopathic growth hormone is diagnosed on clinical grounds, it is based on the symptoms unless a test would show it, but to Gordon's limited knowledge the tests are not very reliable

When asked what the symptoms of human growth hormone deficiency are, Gordon said that, "I know what is said to be the symptoms, but I don't know what the symptoms are ' Gordon spent some time a few years ago looking at various human growth hormone sites, including the ones from the major pharmaceutical companies He also spent some time reading the symptoms He found that

without exception, every symptom of growth hormone deficiency is a symptom of testosterone deficiency and without exception every one of those symptoms goes away or gets moderately better when you replace testosterone So, I don't know if there are any symptoms of adult growth hormone deficiency and we are talking about adult growth hormone deficiency not child

Gordon does not prescribe growth hormone treatments to treat adult growth hormone deficiency because he does not believe in it and he doesn't believe that the symptoms are due to growth hormone deficiency He also said that he has philosophical biological objections to it, but that he is aware of doctors that do treat adult growth hormone

deficiency with human growth hormone

Gordon said that he uses a compounding pharmacy because what he wants his patients to have is not available from commercial pharmaceuticals. He stated, "and also because you have infinite control over the amount of progesterone in the cream or gel that is going on the skin, so you can have the amount." When asked how he would know that the compounding pharmacy is actually preparing the prescription as requested, Gordon said that it was, "only by trust," but that it could be determined based on blood tests. He said that after his patients use the topical cream or gel for some time, he checks the estrogen and progesterone levels with blood tests.

Gordon explained that there can be two types of performance enhancement and differentiated between them. One definition would be treating someone who is sick from lack of testosterone to correct that condition and have him become healthy and have his performance enhanced. The other definition would be giving someone who is healthy supraphysiological doses to further enhance his performance. Testosterone can be abused if excessive amounts of anabolic steroids are taken for performance enhancement in order to become superhuman.

Gordon told the Court that there is a link between aggressive behavior and physiological or therapeutic testosterone replacement therapy. He said that, "at least 75 percent of the men who are treated with physiological testosterone become much calmer and their anxiety levels decrease." When asked by the Court, if for people who use very high quantities to become body builders (for example over 1,000 milligrams) there is an effect on their emotional or aggressive state, Gordon affirmed that he does believe that "roid rage" exists when people take steroids in certain selectivity. In the course of

treating patients, Gordon has had people whose blood levels of testosterone were higher than he wanted them to be after a course of treatment So he would lower the dose or increase the time interval In his opinion, testosterone deficiency is a particular problem for individuals involved in law enforcement

Gordon testified that the Respondent is a patient of his and that he first saw him in July 2009, although he did not become a patient until September 2009 Gordon said he took a partial history in July and the rest of it in September The Respondent was fatigued, weak, depressed and had a tremendous amount of anxiety The Respondent also had insomnia and had lost a good deal of sexuality, "so he had all the presenting symptoms basically of testosterone deficiency Gordon first did blood work on the Respondent in July 2009, and the testosterone levels were elevated because he was taking supplements Gordon said that the supplements have no physiological effects in terms of making the body feel better but they do raise the levels He did not know the names of what the Respondent was taking, but they were over-the-counter from a GNC store Gordon told the Respondent to stop taking the supplements and start replacing his testosterone, because without stopping the supplements the shots were not going to work Gordon said that the Respondent stopped taking the supplements but did not immediately start taking the shots Another blood test two months later showed that the Respondent had testosterone deficiency, with the levels of total testosterone and free testosterone both below adequate levels, but that the blood test was secondary to the symptomatology

Gordon said that total testosterone is the entire amount of testosterone in the blood and that approximately 98 percent of it is bound to protein and is biologically inactive The small amount of molecules that are floating free is called free testosterone

and is biologically active Gordon reviewed his records and stated that on September 8 2009, the Respondent's total testosterone was 332, with the adequate range of 306 to 827, and his free testosterone level was 71 with an adequate range of 12 62 and 4 3 Gordon made the diagnosis of testosterone deficiency not based upon the Respondent's blood test, but rather on the symptoms, although he did say that the blood test corroborated it

Gordon testified that he started the Respondent on a course of testosterone cypionate in November and that he waited that long because the Respondent was reluctant to replace his testosterone because he was, "afraid of the job" Aside from talking to the Respondent about it many, many times, Gordon wrote a letter to the Department, dated September 9, 2009 (and part of RX H), to try to get them to officially give the Respondent approval to be "treated for this disease" There was also a subsequent letter that Gordon got for the Respondent, after the police surgeon told the Respondent that he wanted a letter from an endocrinologist agreeing with the proposed treatment The second letter, from Dr [REDACTED], is dated October 13, 2009 This date was before the Respondent began receiving injections of testosterone cypionate

Gordon gave the Respondent his first injection on November 9, 2009, and stated that the Respondent continues to receive treatment For the most part, he receives 400 milligrams every two weeks and once or twice he had doses of 500 milligrams The onset of the improvement of symptomatology is not always a smooth, steady course and there could be some good shots and some shots that do not seem to do too much Given the Respondent's anxiety over the problems he was having with the Department, Gordon wanted to give him a little boost to try and help alleviate his anxiety a little more Gordon said that those were not supraphysiological doses and that the treatment he has

given the Respondent has been very successful in that all of his symptoms, which have, if not completely disappeared, then mostly disappeared

Gordon said that before the Respondent became his patient, he was treated by [REDACTED] for testosterone deficiency and that [REDACTED] did tests to eliminate conditions other than testosterone deficiency as the cause of the symptoms. Gordon said that, "he did quite an extensive workup. He did CBC [complete blood count], thyroid study." Gordon told the Court that in his expert opinion [REDACTED]'s treatment of the Respondent was "absolutely" within the bounds of accepted medical practice. Gordon was aware that [REDACTED] had pled guilty to accepting kickbacks for people he sent to Lowen's Pharmacy with prescriptions and this did not change his opinion of the treatment that the Respondent received. Based upon Gordon's knowledge of the Respondent as his patient and a review of the treatment the Respondent received from [REDACTED] the Respondent had "absolutely not" ever abused steroids or taken them in a medically inappropriate way.

Gordon was reminded about the two blood tests that were taken during the period of time that the Respondent was under [REDACTED]'s treatment which showed elevated levels of testosterone, and he was asked his opinion on what might have been the cause. He responded "Those blood tests are actually totally irrelevant, they have no meaning whatsoever." One minor reason why the blood tests did not mean anything was because the reading was very much dependent on when the Respondent had applied the gel.

If [the Respondent] had put on the gel and gone directly to the laboratory to get a blood test done or an hour or two later, obviously he would have had a much higher blood level than if he put on the gel the morning before and the next day gone to the lab without putting on the gel to get the blood test done. You are going to get two totally different numbers.

Gordon stated that the major reason that the blood tests were meaningless was because

When you take the gel you put it in your hand and you rub it someplace, say you rub it on your leg now you have gel on your hand, you have gel on your leg, you have testosterone getting into the skin in two different sites, okay You go wash your hands, doesn't matter you still have the testosterone gel in the skin in your hand Now you go to the laboratory Well, if you use your right hand to put the gel on, if the blood was taken from the left arm, well, then the testosterone is going into the body from both sites as being diluted throughout the whole body before it comes out to that test tube but if you go to the lab and the phlebotomist takes the blood from your right hand where you have testosterone in your hand it's going into the capillaries, in the ventricles into the vein right into test tube and remember you are applying milligrams, milligrams you're testing for free testosterone for picograms that is a billionth of a milligram That is what you are looking for I mean if you have one thousandths of a milligram getting in there you would have million picograms It's ridiculous So you if don't know which arm the blood was taken from or what time the last time the dose was applied the blood tests are totally useless, meaningless

When asked if it is common for a patient of his to question the dosages of medicine that he prescribes Gordon said that it is very rare especially at the outset He said, "The first time you prescribe something, if I give someone a prescription for Zocor, they are not going to ask is that the right amount, no, that's kind of silly ."

On cross-examination, Gordon testified that while he does not believe in the low end of the testosterone reference ranges given by the laboratories in the sense that they are, normal, but they are not healthy," he does believe in the high end He has been treating approximately 100 to 120 new patients a year for testosterone deficiency and of the 155 or so patients he sees a week, 80 to 85 percent of them are diagnosed with testosterone deficiency based upon the symptomatology, i e , the patient telling him how

they feel or what they believe their symptoms are. Sometimes the patients offer information such as, "I feel tired, I feel weak," but very often Gordon has to pull it out of them by asking questions.

Gordon testified that a person's testosterone cannot be depressed by taking testosterone because then it is going to be elevated but that he has seen them subsequently develop a low testosterone level after using testosterone. A person can suppress the pituitary production of hormones while the patient is taking testosterone and for a period of time after, but Gordon did not believe that this condition lasts forever, as opposed to Green, who does.

Gordon said that he has never done a controlled study based on testosterone deficiency. He noted that nothing in his book, Testosterone Deficiency The Hidden Disease, is a product of controlled studies but rather 100 percent or close to 100 percent of what is contained therein is based on anecdotal evidence, from what he had observed clinically and what patients had told him. Gordon indicated in the book that testosterone can be overused and can be dangerous. If the test was reliable Gordon might possibly consider two-and-a-half times the normal level or maybe above-adequate levels to be dangerous. He did not consider the blood tests done by [REDACTED] on the Respondent to be reliable, aside from the initial one, but the ones he (Gordon) ordered were reliable because he knows when he took them and what the Respondent was taking. The lab tests were done by Quest Diagnostics which Gordon considers to be one of the best and most reliable labs. Gordon acknowledged that his book contains a substantial amount of information about female testosterone issues and hormone issues. The only experience Gordon had with the application of transferrable testosterone in cream or gel form and

patches is what he learned from patients who used it and studies he has read about its efficacy. In his practice he has prescribed them to one patient, once in 11 years.

Gordon testified that he does believe in the reference ranges that the labs use for their normal values and stated that the blood test results, while not relevant to the clinical situation are not totally irrelevant. Gordon measures the success of his treatments not by blood tests but by the clinical response with the relief of the symptoms. He asks the patients for a detailed description of how they are doing. Gordon said that everybody he treats becomes dependent on testosterone for their health and that it is a lifetime treatment. When asked if the patients who come to him every two weeks for injections have to get this injection every two weeks for the rest of their lives, Gordon said, 'If they want to stay healthy they do, they are never going to start to make it on their own again.'

Gordon clarified that while testosterone deficiency is normal and happens to everyone, it is still a disease. He said, 'Well, of course it's a disease, lots of diseases happen to everyone. Everyone develops degenerative osteoarthritis, everyone develops senile dementia. There is no such thing as getting an X-ray on the knee of someone who is 40 years, where the X-ray report is normal. It always says that there are degenerative changes, always.' Gordon said that this is true in 99 percent of cases based on his experience reading X-rays for the last 43 years.

Gordon testified that he does not think a testicular exam is necessary and that it does not really contribute anything. For him to diagnose someone with testicular tumors, they would tell him that they have a lump, at which point he would examine it. If they could not feel it then he doubts that he could either and it is not hard to do a testicular exam, there are no special instruments required. Gordon did not do a testicular exam in

this case and in the past he has done testicular exams on men with testicular complaints He also said that he does not examine the ovaries of the women who come, despite the fact that it is a disease in both sexes

Gordon said that he was not certain how the reference ranges are determined by labs, although he said he has a general idea, which seems not to be true in light of the aforementioned Harvard University study When asked if he was aware that the authors of the study do blind studies, he agreed that they probably do and said that he was aware that they have standard operating procedures that they must follow He was aware that the labs are monitored by the federal government and that they have quality controls that they need to follow

Gordon reiterated that at one point the Respondent told him that he was experiencing anxiety in regards to his upcoming trial In response to that he gave the Respondent a boost, namely a 500 milligram testosterone injection as opposed to what he had prescribed him in the past, which was a 400 milligram injection Gordon agreed that the manufacturer's pamphlet for testosterone cypionate recommends that the dosage be anywhere from 50 to 400 milligrams every two to four weeks and that 500 milligrams is over what the manufacturer recommends as the normal amount that should be prescribed

Gordon told the Court that he has questioned the ability of the compounding pharmacy to put together the compounds he prescribes, but he is still using such a pharmacy He said that he went over things with the pharmacist in great detail

Gordon said that when the Respondent came to see him in July 2009, his testosterone level was above normal The Respondent told him that he was taking some sort of testosterone supplement and enhancers, which may or may not have been DHEA

or some other over-the-counter supplement, but he did not record it anywhere in his medical records

Gordon said that he reviewed [REDACTED]'s medical records of the Respondent and that [REDACTED] did a routine blood work-up. He believed there was some stamp notation about the physical exam being negative and he had no indication that a testicular exam was done on the Respondent. He reiterated that [REDACTED]'s treatment of the Respondent was acceptable medical practice, including the growth hormone, based on the fact that "the FDA apparently has no objection to human growth hormone being prescribed for those symptoms and for idiopathic reasons. So based upon that, I would have to say that it's accepted." He reiterated that he does not believe that there is adult human growth hormone deficiency and that he has over 1,000 patients and has been doing this for a number of years.

Gordon clarified that while he does not believe that human growth hormone is an appropriate diagnosis, that does not mean that it is not a medically accepted diagnosis. Gordon was aware that [REDACTED] was prosecuted and had pled guilty to receiving kickbacks from Lowen's Pharmacy. He also said that he was told that [REDACTED] had to surrender his medical license in the states of New York and New Jersey.

Gordon acknowledged that he is not an endocrinologist and that hematology is his specialty although he does not practice hematology anymore. He does consider "dozens if not hundreds" of reasons other than testosterone deficiency why his patients could be experiencing their symptoms and, correspondingly, other treatments. Gordon restated that of the approximately 155 patients that he sees per week, 80 to 90 percent of them suffer from testosterone deficiency and are being treated with testosterone injections.

When asked how he differentiates between someone who has a testosterone deficiency and someone who has these symptoms for another reason, Gordon said that when the patients first come in, he does "a thorough evaluation, you do a thorough blood work-up, you do a thorough history, by my definition a thorough physical examination and you make sure that you ruled out all the other possibilities." To rule out other possibilities the patients need to have normal metabolic profile, meaning normal adrenal functions, normal liver functions, normal electrolytes and normal calcium and not be isethionic. A CBC has to be done to make sure that they are not anemic and a thyroid test to make sure that they do not have a hyperthyroid. He needs to check on the iron levels and make sure they do not have an iron deficiency, and of course, after all these things you are looking to see if there are intercurrent diseases that you may not know about. You do a physical examination make sure they don't have an enlarged liver, enlarged spleen, that their heart is beating normally." Gordon does think it is important to check a patient's blood pressure and would record that information in his medical records.

Gordon agreed that when a person takes testosterone, the body starts to shut down the pituitary and decrease the FSH, LH and the testicular secretion of testosterone starts to go down. He did not agree that the past use of testosterone would suppress the pituitary for a prolonged period of time after the testosterone has stopped. The Court acknowledged that Gordon's testimony was that prior testosterone use could suppress a body's natural ability to produce testosterone.

Gordon said that he takes insurance for his treatment and that the Respondent was paying by insurance. He was aware that in his Department interview the Respondent indicated that he did not suffer from low libido. He was not aware that although

[REDACTED] s records indicated that the Respondent suffered from low libido, when this was pointed out to the Respondent he denied having ever told [REDACTED] that he suffered from that. During his examination of the Respondent, the Respondent indicated to Gordon that he did suffer from low libido and this was after he was already being treated with the 400 milligrams of testosterone cypionate Gordon said that during the course of his treatment the Respondent was still suffering from low libido but that he no longer is

On re-direct examination, Gordon stated that he and the Respondent had a discussion about the Respondent's libido when they initially met He did not recall the exact details of the conversation, but he did say that very often people deny having a loss of libido and that ultimately they almost always have it It is sometimes difficult to establish the level of the patient's libido and sometimes he has to probe Gordon would ask the patient if his libido is the same as it was at the age of 22 (22 being an age at which a person with enough testosterone will have a very healthy libido), then ask him to quantify how much of his libido he has lost since then (i.e., a half, a quarter, a third) Gordon was not troubled by what the Respondent said on his official Department interview, because if a man is asked how his libido is in front of a bunch of other men, his reaction will be to say that it is fine, no matter what the reality is

Gordon said that he did not record the fact that the Respondent was taking a supplement in his medical records in July 2009, because he was not sure in what context or role the Respondent was seeing him (i.e., as someone who might aid in his defense at a Department trial or as a patient, or both), so he kept his notations to a minimum

Gordon said that DHEA is taken to raise the level of testosterone in the blood, but it does not have a clinical effect, meaning it does not improve the symptoms of

testosterone deficiency

Gordon told the Court that the Respondent came to see him in July 2009, having last seen [REDACTED] according to the medical records around August or September of 2007. If during that interim period the Respondent had not used testosterone, then by the time he came to see Gordon, the prior usage of testosterone in 2006 and 2007 would have no effect on his body's ability to produce testosterone. It may take a few weeks, or a month-and-a-half, but the pituitary always recovers, just like it recovers from contraceptives in women. In Gordon's medical opinion, the low level of testosterone in the Respondent's September 2009 blood test could not be attributed to his use of testosterone under [REDACTED] s treatment.

Gordon said that his Staten Island facility is not a facility where he sees general practice patients and that it is exclusively for patients with testosterone deficiency. The reason that 80 to 85 percent of his practice is devoted to patients who are in need of testosterone replacement is because he does not accept new patients unless they are coming to be diagnosed and treated for testosterone deficiency. If they also want him to be their primary care physician he will do that, but he does not encourage that unless they especially want it. This happens especially with patients who have the HIP insurance plan. Otherwise, they have to pay cash since they need a referral to go see a specialist and HIP will only give a referral for testosterone deficiency to a neurologist who is a surgeon or an endocrinologist for the diagnosis and treatment. So he becomes their primary care physician instead. Gordon's patient base is self-selecting in that he is obviously a strong proponent of replacing testosterone, and while he does not send away patients who do not want to take it when he thinks that they require it, it is obvious to

them that he is not happy with their decision and it suits him just fine if they go to another doctor So by and large any patients who don t want to take testosterone have gone to see other physicians and use them as their primary care physicians

When asked by the Court, Gordon affirmed that for every ten men he sees over the age of 50, eight or nine of them would be testosterone-deficient, or they would be symptomatic, i.e., they would think that it is due to old age but it is actually due to the disease Gordon reiterated that HIP would only give a referral for an endocrinologist or a neurologist for testosterone He told the Court that his view of testosterone deficiency is still an "enormous minority view, but said that the position has grown and that more people are coming to it When asked if it would be outside of standard medical practice to diagnose at this level of testosterone deficiency (80 to 90 percent of men over 50) the witness said that he would have to say yes

The Respondent

The Respondent is 52 years old and was born and raised in Brooklyn He attended Regis and Midwood High Schools and then the State University of New York Empire State College, where he obtained a bachelor degree in Business Administration in 1997 He joined the Department in 1979 and served in Neighborhood Stabilization Unit 2 and the 5, 10, 28, 73, and 84 Precincts before he was promoted to the rank of captain at the close of 1997 On January 1, 1998, the Respondent was assigned as the Executive Officer of the 77 Precinct, and became the Commanding Officer there in 1999 In 2002, he was transferred and assigned as the Commanding Officer of the 75 Precinct Between 2002 and 2005 he was promoted three times to Deputy Inspector, Inspector and then Deputy Chief In September 2005, he was assigned as Executive Officer of Patrol

Borough Brooklyn North, where he currently serves

The Respondent testified that in his career he has received one Schedule "A" command discipline and two sets of charges prior to these. Those charges were substantiated complaints from the Civilian Complaint Review Board and he was exonerated on both. The Respondent has been commended 54 times for excellent police duty, 13 times for meritorious police duty and he has received nine commendations.

The Respondent said that he belongs to a gym and works out every day. He has been working out since he was 22 years old and has absolutely never taken anabolic steroids for the purpose of improving his performance at the gym, nor for any other reason. The Respondent said that sometime around 2003 he began to have medical problems. He started experiencing depression, dizziness, had trouble concentrating and had pains and injuries that would not go away. He was also having chest pains.

The Respondent said that he did not seek any medical help in connection with those problems at that time because for most of his life he has not been a person that goes to doctors or takes medications regularly but that they got progressively worse. The Respondent said that around 2005 he was experiencing a lot of dizziness, particularly when he was working out. He got into the habit of sitting down or kneeling down between sets because he was afraid that he would fall. It was in between one of those sets that a man in the gym asked him what was the matter.

The Respondent told the Court that before that discussion in the gym he had occasion to discuss his problems with Chief Scagnelli during an Honor Legion meeting in the spring of 2005. They were sitting at the table after dinner and just talking. His chest pains had progressed to the point where when he experienced them, he would actually

jump He began having chest pains at the table and when Scagnelli asked him what was the matter, he explained that he was having these chest pains He did not describe any of the other symptoms that he had been having He believes it was the next Friday that Scagnelli called him into his office and told him that he wanted him to go to Dr [REDACTED] s office in Staten Island right away in order to have his heart checked

The Respondent said that he believed that [REDACTED] took blood that day and that he scheduled him for a thallium stress test to be done the following Saturday [REDACTED] told him that based on his blood test his cholesterol was very high [having refreshed his memory with the lab report the Respondent testified that his total cholesterol was 276, with a 222 low-density lipoprotein (LDL) and 30 HDL] He also told him that based on the heart test, he had the heart of a 25-year-old man [REDACTED] did not talk to the Respondent about testosterone levels, nor did he test them When asked how [REDACTED] explained his symptoms, the Respondent said that 'he attributed it to stress or said he couldn't explain it He said he thought I was under a large amount of stress According to the Respondent, he was under no more stress than is normal for a police commander

The Respondent said that there came a time when he experienced dizziness and weakness while working out at the gym and he had a discussion about those symptoms with someone there sometime in the fall of 2005 He was kneeling down between sets, as was his practice, when a man came up and asked him what was the matter The Respondent explained to him that he was feeling dizziness and depression, and he was having trouble sleeping and loss of strength The man said that he had the same thing happen to him He told the Respondent that he had gone to see a doctor who had checked his blood levels and found them low The doctor had put him on replacement therapy

and all the symptoms went away. The Respondent said that when the man talked about replacement therapy, he honestly did not know what he was talking about. The man gave him [REDACTED]'s name, but did not give him any advice about seeing him.

The Respondent testified that he did not contact [REDACTED] at this point, again because he is hesitant to go see doctors. He changed his mind when at some point either late in 2005 or early in 2006 he was at a retirement or promotion party at a restaurant in Brooklyn and the symptoms got so bad that he thought he was going to lose consciousness. At some point in the next couple of days he looked up [REDACTED]'s number in the yellow pages. The Respondent did not do any research on who [REDACTED] was.

The Respondent said that he believes he first went to [REDACTED]'s office in January 2005, to an office on Seaview Avenue. The Respondent said that a phlebotomist took blood from him and that he did not see the doctor on that occasion. An appointment was made for him to see [REDACTED] at his other office pending the outcome of the blood test and he ended up going to see him within a week or two of that test. The Respondent said that on that occasion he went into [REDACTED]'s office and [REDACTED] examined him briefly. [REDACTED] made him take his shirt off, took his blood pressure, listened to his heart, checked his musculature, then sat him down and discussed the results of the blood test.

The Respondent said that the first thing [REDACTED] did during their discussion was ask if he took DHEA. He told Lucente that he did not even know what that was and [REDACTED] explained that it was a hormone. He told [REDACTED] that he did not take it and showed him the vitamins that he did take. [REDACTED] assured him that DHEA was not in them. He told the Respondent that it was an immune hormone and that it was high. The Respondent thought this was a good thing and that it would prevent him from getting

sick [REDACTED] said that it did not make sense for it to be high because his testosterone was low and told the Respondent that he wanted to put him on hormone replacement therapy. The Respondent had a discussion with [REDACTED] in regard to his symptoms and he had told him that he was experiencing depression, anxiety, dizziness, weakness, trouble concentrating and remembering, loss of strength, chest pains and physical pains and injuries that just would not heal.

The Respondent testified that [REDACTED] told him that if he continued with his testosterone being that low, that he would be putting himself at a great risk for a heart attack, a stroke, cancer and would shorten his life considerably. The Respondent told [REDACTED] about his visit with [REDACTED] and that he had his heart checked and it was good. He did not believe that [REDACTED] knew who [REDACTED] was.

The Respondent told the Court that he questioned the replacement, "because I am a police officer and I know that these substances are used for bodybuilding and that it's dangerous. So from a professional and personal standpoint, I wanted to make sure that it was proper and stayed within the normal bounds." The Respondent wanted to be very careful about that and [REDACTED] assured him that it was not about that.

[REDACTED] told the Respondent that the amount he was going to give him is not what the bodybuilders take and that he was just going to get his body to where it should be healthwise. The Respondent said that what he understood from this was that it was not about bodybuilding or performance enhancement. The Respondent discussed these things explicitly with [REDACTED] because, "Well I have been in gyms my whole life. I've seen people die from abusing this and also from what I do for a living. I had to be sure that I wasn't doing anything that could even be perceived as being illegal or improper."

The Respondent said that [REDACTED] addressed his concerns and assured him that from any standpoint, medical or legal, everything he was doing was proper and that he was just getting him to be where he should be [REDACTED] also told him that he was going to put him on Somatropin He said that [REDACTED] told him that it was a hormone that was used to treat the symptoms he was suffering from

The Respondent said that he had a general knowledge of what testosterone was [REDACTED] told him that the body normally produces it, although some people's bodies stop after a while, causing the symptoms that the Respondent was suffering from, and possibly leading to heart attacks, strokes and cancer The Respondent said that on his first visit with [REDACTED] he did not specifically ask [REDACTED] for either testosterone or hormones When he asked [REDACTED] his questions about being a police officer, the Respondent was not concerned about being Dole tested for these drugs, since at that time the Department did not test for steroids He expressed concern because he "wanted to make sure that I was within legal parameters I have an obligation to do that as a police officer" The Respondent stated that he has never taken any substance to enhance his performance

The Respondent said that he did have a discussion with [REDACTED] concerning his sexuality and libido When [REDACTED] asked if he was suffering from low libido, he said no The Respondent said that in retrospect this was not an accurate answer because after he started the therapy, he realized that things were not so fine

The Respondent said that he was given two types of medication One was a cream and came in what appeared to be a big syringe with unit measurement lines but without a needle [REDACTED] told him to apply one unit in the morning and one unit at night to either the inner side of his thigh or the inner side of his bicep [REDACTED] did not have

the medication there with him at the time, but showed him an empty syringe. In regards to the Somatropin, the Respondent said that he was told to inject it into his thigh six days a week, once a day. It also came in a syringe and [REDACTED] showed him a sample.

The Respondent said that other than the fact that he did not really want to stick a needle in himself, he had no concerns about using an injectable medication. The Respondent had not received any medical training other than basic first aid and CPR (cardiopulmonary resuscitation) at the Police Academy. He has never had any training in the use of steroids or growth hormones. After [REDACTED] prescribed these medications for him, the Respondent did some research on the internet. He learned that the treatment [REDACTED] was prescribing was advocated by some doctors and not by others. He trusted [REDACTED] because he was a doctor and he has trusted every doctor that he has ever gone to.

After that first visit, the Respondent saw [REDACTED] again every six weeks or so, in order to have his blood checked on a regular basis and for follow-up visits. [REDACTED] would weigh him, take his blood pressure, check his cholesterol and talk to him for clinical diagnosis. They discussed his symptoms almost every visit and [REDACTED] determined he was making progress with the therapy because they were gradually receding. The bouts of severe anxiety and depression every morning were becoming less frequent and less severe, the dizziness was going away, his strength was returning and his cholesterol and blood pressure were dropping. The Respondent was performing better at work and feeling "just a better feeling of well-being." He was able to work out longer and more intensely, without suffering any kind of dizziness or weakness.

The Respondent stated that [REDACTED] did discuss his blood tests with him and [REDACTED] would either be happy or unhappy. [REDACTED] would change the level of

medication, trying to level it off so that it did not go too high or too low. Late in the summer of 2006, [REDACTED] told the Respondent that his levels were very high. When the Respondent walked into the office [REDACTED] seemed upset and asked if he was over-medicating. The Respondent said that he was not and that [REDACTED] would know if he was, because he would be going through his medications more quickly than he was supposed to. When he told this to [REDACTED] the doctor calmed down a bit and asked him for his routine on the day that he went to the blood test.

The Respondent said, "I told him [REDACTED] I would get up in the morning, go to the gym, take a shower, apply the medication, get dressed for work and go take the blood test before I went to work." The Respondent said that [REDACTED] told him that putting it on right before he went to the blood test "is really going to skew the results." [REDACTED] told him that since he had just put it in, it would be in his arm where the blood was taken out from and his veins would be full of testosterone. It would, therefore, be an untrue reading extremely high. [REDACTED] never again told him that his levels were high. After that incident, [REDACTED] was not happy with the level that it went to, when the Respondent was applying it the way he was asked to (the Respondent said that he believed his total was down to 300 and something) and so he increased the dosage. Instead of one in the morning and one at night, the Respondent was now applying two in the morning and one at night. The Respondent did have his blood checked after that and was told that it stayed within the normal range.

The Respondent reiterated that he discussed his symptoms with [REDACTED] very single time and said that he saw him a total of about 15 times. The Respondent discussed in detail how his symptoms were improving and that at that point he told [REDACTED] that in

regards to his libido, he was very happy with how his body was reacting that way. There was never a time while he was under [REDACTED] s treatment that he experienced an increase in aggression or aggressive tendencies.

The Respondent said that [REDACTED] would actually give him written prescriptions which he would fill at Lowen's Pharmacy. The Respondent went there because [REDACTED] told him to. [REDACTED] explained that it was a compounding pharmacy and that there were only a couple of pharmacies that actually did compounding and this was the one he recommended. [REDACTED] said that the compounding pharmacy makes the cream and the Respondent did not ask him why he could not just get it at a regular drug store. [REDACTED] never discussed with him the strength of the cream that he was prescribing, nor did he ever tell him the percentage of the testosterone level in the prescription.

When asked if he learned anything about topical testosterone replacement creams or gels when he was doing his research on the computer, the Respondent said, "Just that it's commonly used to replace testosterone in deficient people." He did read about commercially available creams or gels, such as AndroGel, but it never occurred to him to ask [REDACTED] why he was not using it. The Respondent did not do any research on Lowen's Pharmacy at the time he started to have his prescriptions filled there. Lowen's is in Brooklyn and the Respondent lived in Staten Island at the time. He did not go to a pharmacy on Staten Island because [REDACTED] did not tell him that there was one and because Lowen's was only a couple of blocks out of the way, on his way to work.

The Respondent said that he did not use his insurance for [REDACTED] because [REDACTED] did not accept it and that [REDACTED] charged \$1,000 dollars for a year's worth of visits (10 to 12 visits). The Respondent paid for his prescriptions by credit card and he

did not use the prescription plan which he had as part of his health insurance because it did not and still does not cover this kind of therapy. The Respondent knew that because [REDACTED] told him at the time that his union would not pay for it [REDACTED] told him some unions do and he then mentioned that the plumbers' union does. The Respondent knows his union currently does not cover it because the president of the union told him so. At that time though, the Respondent did not check as to whether it did or did not cover it.

The Respondent testified that there came a time when he became aware that Lowen's was under investigation. He read something in the newspaper around May 2007 about it being raided by, he thought, a State Health Department. The Respondent asked [REDACTED] about it and [REDACTED] was aware of it and told him that it had absolutely nothing to do with him. He told the Respondent that Lowen's had had a problem because they were filling prescriptions that people had obtained over the internet from Florida and that these kinds of substances cannot be prescribed unless there is a face to face relationship with a doctor and corresponding blood tests. The Respondent did not ask him at that time whether or not he could go to a different pharmacy, because, "I likened it to the fact that if I am going to Walgreens for penicillin and they are being investigated for Medicare fraud I am not going to go to a different drug store. If they are doing something wrong I assume the state agency will close them down. If not, they will leave them open."

The Respondent said that there is a list of businesses that police officers are not allowed to frequent. The lists are made up of certain establishments that might give free or discounted meals to police officers, or whose owners are involved in some kind of ongoing criminal enterprise, so the Department will declare them as one of three different designations, either off-limits, corruption-prone locations, or unlawful. Such

designations are usually done on a precinct by precinct basis. The Respondent has never seen Lowen's on any kind of list, but he admitted he did not look

The Respondent told the Court that in October of 2007, he saw another newspaper article which stated that [REDACTED] was under investigation in connection with Lowen's, that there may be some police officers involved and that there was alleged steroid abuse. The Respondent immediately notified his union president, told IAB that he wanted to come in and have a voluntary test and make statements and stopped taking the medications. The union president told him that IAB had to first check with the Brooklyn DA's office to see if he was going to be arrested or not. Within a few hours, they got back to the Respondent and told him that he was to report to One Police Plaza the next morning to give urine and hair samples and a voluntary statement, which he did. The urine and hair sample tests were negative for any kind of drug or steroid abuse.

The voluntary statement was the one referred to earlier in the trial by Mason. The interview was attended by Campisi, Mason, then-CEA President John Driscoll and Karasyk. The Respondent answered all of the questions that were asked of him truthfully and did not say anything during the interview that was not true. The Respondent was requested to give an official Department interview, which he believed took place sometime in early 2008. It was conducted mostly by Carione, while Deputy Commissioner Julie Schwartz of the Department Advocate's Office was there and asked some questions. Campisi and Mason were there as well, along with the new union president Deputy Inspector Roy Richter and Karasyk. The Respondent answered all of the questions that were put to him truthfully and he had a chance to review that transcript. The Respondent confirmed that there was nothing he said during that interview that was

not true or was inaccurate

The Respondent said that after he stopped taking the medication in October 2007, his symptoms returned, the anxiety, the depression, the weakness, the dizziness, the body pains and the lack of concentration all came back pretty quick and they got progressively worse. The Respondent also had problems sleeping and would wake up at five o'clock in the morning shaking and soaking wet.

The Respondent said that he went to the vitamin shop and got natural supplements to try and keep his testosterone up naturally. He took, amongst other things, Novedext XT by Gaspari, DHEA and things of that nature. They did not help much, but he was afraid not to take them for fear that his symptoms would get worse. He did not go to any other doctors at that time because he did not think that the Department would allow him to resume therapy.

The Respondent said that at some point in 2009 he did start seeing another doctor, Gordon. The Respondent still sees Gordon and he receives an injection of testosterone every two weeks. Under this treatment the Respondent's symptoms have subsided gradually to the point where they now are almost non-existent. The Respondent reiterated that he has never used the medications given to him by [REDACTED] and now by Gordon for the purpose of enhancing his performance. The reason he took them was because he was sick and they told him that these medications would make him feel better.

On cross-examination, the Respondent testified that, as the Executive Officer of Patrol Borough Brooklyn North, there are approximately 3,000 officers under his supervision. Sometimes, but not always, he would be aware if an officer under him was the subject of a disciplinary matter and that as a supervisor he has in the past had to prefer

charges against officers under his supervision. He could not recall if he ever had to sign off or prefer charges for any off-duty misconduct, or for conduct prejudicial charges.

The Respondent said that he works out at the gym every day that he can and that he has a regular routine including cardio and weight training that can last anywhere from two to three hours. He confirmed that it was shortly after an Honor Legion meeting in the spring of 2005 that Scagnelli referred him to [REDACTED]. The Respondent has known Scagnelli for around 20 years and generally trusts his opinion in personal matters. He relied on him enough to go to [REDACTED] for a stress test and to check his heart. [REDACTED] took blood and did a physical exam, but he did not recall having to put on a hospital gown.

The Respondent reiterated that [REDACTED] told him that his heart was fine and was like a 25-year-old's. He also restated that he actually took good care of himself, including trying to work out every day. [REDACTED] told him he was probably under a lot of stress. At that time, the Respondent was an Inspector and Commanding Officer of the 75 Precinct. The Respondent agreed that the 75 Precinct is a very busy command and that being the Commanding Officer of any precinct is a lot of stress. The symptoms continued after his visit with Wyne, but he did not go back to see him again, nor did he go to see the internist he had seen in the past, Dr. [REDACTED]. He did continue to try to work out regularly.

The Respondent said that there came a time when he was working out in the gym and he had to take a knee in between sets because he felt so dizzy and weak. An older man approached him, someone who he had seen on a regular basis but whose name he did not know, and asked him what was wrong. The Respondent has seen him since but still has not learned his name. The Respondent said that in essence, the man was a stranger and that he did not know anything about him.

The Respondent said that he told this stranger that he was not feeling well and what his symptoms were. He believed that of the symptoms he described that day, he had described most, if not all of them to [REDACTED]. [REDACTED] had said that stress could be one of the issues. The stranger told the Respondent that in the past he had had the exact same symptoms and that he had gone to a doctor who gave him some kind of hormone replacement and they all went away. The Respondent did not know if this man had any medical training and said that the man gave him [REDACTED]'s name but not his number.

The Respondent said that this conversation happened around springtime and that it was late 2005 or early 2006 when he finally called [REDACTED]. Following their initial discussion, he had not had another conversation with that man about [REDACTED], nor had he discussed this hormone replacement with anyone else in the gym, although he did continue to work out there. There was no particular reason why he remembered this conversation about [REDACTED] after five or six months and nothing in particular brought it to his attention. The Respondent testified that he had not written down [REDACTED]'s name, he just remembered it.

The Respondent told the Court that he has been working out in gyms for most of his adult life and he had seen posters for doctors advertising hormone replacement prior to the man in the gym using that term with him. He did not really know what they meant. At the time of that conversation with the man in the gym, the Respondent did not look up the term or do any research on it. He assumed that it meant replacing hormones but he did not know which hormone it was referring to and he did not speak to anyone about it.

The Respondent said that he got [REDACTED]'s information from the yellow pages, but did not recall if it listed one or both of his offices. He did not recall anyone asking him

why he was calling or why he wanted to see the doctor and he did not tell them his symptoms or why he wanted to make an appointment. He did not speak to [REDACTED] at that time and did not recall whom he had spoken with. He stated that he just said that he wanted to make an appointment to see the doctor. The Respondent did not ask any questions, nor did he ask if they took insurance. The Respondent did not know what type of doctor [REDACTED] was, nor did he ask. He now knows that [REDACTED] is a doctor of osteopathy but does not know what kind of doctor that is, nor has he ever checked or done any research on it.

The Respondent said that at the initial appointment he went into the office on Seaview Avenue and they took blood at that location. He did not see [REDACTED] in the office at that time. After the blood test, he was given an appointment to see [REDACTED] approximately two weeks later, at the office on Clove Road in the Fountain of Youth building. The Respondent did not remember seeing the sign that said, 'Fountain of Youth Building,' nor did he remember seeing the sign with 'Life Longevity Center' on top of [REDACTED] s name. The Respondent said that this was the same building that he went to on about 15 occasions. He has never looked up [REDACTED] on the internet and he does not know if [REDACTED] was a sports medicine doctor.

The Respondent said that other than the receptionist, he did not think that there were other people in the waiting room when he went for his initial visit. He was told that there was a fee to partake in L [REDACTED] s services, which was \$1,000 a year. When he had called to make the appointment he had not been told about the fee. The Respondent paid half of the amount then and half at a later date. He paid for it by credit card. He reiterated that this was his first meeting with [REDACTED] that he did not do any research on

him, that he did not know what type of doctor he was, and that he gave him half of his yearly fee. He did not have to pay the fee before he spoke to [REDACTED] but rather afterwards. The Respondent had GHI insurance but was not sure if he had asked [REDACTED] whether he accepted it or if [REDACTED] had just told him that he did not. The Respondent was not concerned that [REDACTED] did not accept his insurance. The Respondent's GHI plan does not cover prescriptions, but he has a separate prescription plan from his union. The Respondent has never been on the board of any union.

The Respondent reiterated that [REDACTED] asked him about DHEA during their initial meeting and he told him that his DHEA levels were abnormally high. The Respondent had never taken steroids prior to seeing [REDACTED] but he knew what steroids were. He knew that people in the gym used steroids and he had read about professional athletes who used steroids. He reiterated that he had never used steroids while working out and could not account for why his DHEA levels were abnormally high.

The Respondent said that over the course of all his visits to [REDACTED] [REDACTED] never performed an electrocardiogram exam nor did he ever perform a prostate exam, or a testicular exam. The Respondent reiterated that after he reviewed the blood test results with [REDACTED] during the initial visit, [REDACTED] told him that he had low testosterone, which could lead to strokes, heart attacks and cancer. The Respondent did, at one point, discuss the fact that he had seen a doctor six months earlier who had taken a stress test, but did not remember exactly when that was. He told [REDACTED] that his heart was fine and he probably also told him that the other doctor had said that the symptoms could probably be attributed to stress, although he could not recall for sure if he had mentioned that.

The Respondent said that he did not have to pay a yearly fee to [REDACTED] nor had he

ever had to pay a yearly fee to any prior doctors In that initial meeting, [REDACTED] diagnosed him with testosterone deficiency and growth hormone deficiency The Respondent, who is about 6'1", did not ask if the diagnosis had anything to do with his height [REDACTED] told him that he could determine that he was growth hormone deficient because of the symptoms and because of the testosterone levels in his blood

The Respondent said that [REDACTED] prescribed him testosterone cream, which is a male hormone and a steroid [REDACTED] also prescribed him two or three different human growth hormones over the course of the treatment and he believed that the first one was Somatropin, although it might have been Genotropin The Respondent said that he did not really know what human growth hormone was, although he had heard of it All he knew about it was that he had read that athletes took it to enhance their performance and he asked the doctor about that He was concerned that he was being prescribed something that was going to help him and not hurt him and that it was a legal dose The Respondent did not recall ever being concerned about the legality of his course of treatment at any of his prior doctors

The Respondent said that [REDACTED] told him that these prescriptions could not be filled at a regular pharmacy like CVS or Walgreens, but that they had to be made at a compounding pharmacy The Respondent said that he did not know what a compounding pharmacy was but that [REDACTED] told him that was where they make it The Respondent testified that I [REDACTED] told him to go to Lowen's Pharmacy and that he did not at any time try to go to any regular pharmacy

The Respondent told the Court that [REDACTED] told him that he was sick and that these medications would make him feel better After he was prescribed this he was

concerned about the legality and safety of them He did a little internet research, but did not remember all of the sites he went on He did remember one site, on which a Dr Craig from Harvard University listed the symptoms he had and said that someone who exhibited them would be a candidate for testosterone and human growth hormone deficiency In addition, the Respondent learned over the internet that testosterone deficiency is known as hypogonadism He said that quite a few of the sites advocate the use of human growth hormone to treat hypogonadism

The Respondent said that he found the first human growth hormone on an internet pharmaceutical site with the exact same delivery method and for the exact same price He said that he looked at Genotropin and at Somatropin in particular on the internet

The Respondent said that [REDACTED] told him how much these medications were going to cost and that the human growth hormones were about \$400 a month The testosterone was about \$150 a month Neither one of the medications was covered by his insurance The Respondent said that although sometimes exceptions are made if a particular medication is medically necessary, his union would still not pay for this type of medication The Respondent said that he did not check with them to see if they would make an exception It did not concern him at all that he was spending upwards of over \$500 to \$600 a month on prescription medication

The Respondent said that [REDACTED] told him that the human growth hormone had to be injected into his body and he showed him how it worked The Respondent affirmed that he is not someone who normally goes to doctors, or takes medication often and said that he did not like that he was injecting medication into his body, but he did it anyway The Respondent said that in his adult life he had never before gotten a prescription that he

had to inject with a needle. He did not believe that there were any alternative methods of treatment and he discussed his discomfort with [REDACTED], but he did not remember discussing alternatives. The Respondent said that he did ask [REDACTED] if there were any less expensive methods of treatment and that there were none. He did not check with any other doctors to see whether or not there was an alternative or a less expensive method.

The Respondent acknowledged that at the time [REDACTED] gave him the prescriptions, he knew that the testosterone was a steroid and that the Somatropin or Genotropin was a human growth hormone. He also knew that the abuse of these substances by athletes was a major topic in the news and that athletes were getting into trouble for using needles to inject themselves with these substances. The Respondent said that he was not concerned at all about taking the same prescriptions that people were getting in trouble for.

The Respondent testified that [REDACTED] had told him that he just wanted to get his testosterone levels back to normal and that to that end he (the Respondent) was getting regular blood tests, approximately every six weeks. The Respondent said that he had an initial blood test on January 16, 2006, and that it was that blood test which [REDACTED] showed him, which said that his testosterone levels were low. This blood test recorded his testosterone level at 215. The Respondent acknowledged that approximately three months later, on April 17, 2006, a second blood test showed his total levels at 1108. He agreed that this test was within three months of his having started treatment with [REDACTED] and that his level was higher than the normal range. The Respondent said that [REDACTED] discussed his test results with him every time he went, but when asked if he was concerned about his levels being high, he told the Court that he was not aware of it.

The Respondent said that he took another blood test less than two months after that, on June 13, 2006, and that at that time his total testosterone level was up to 2252. The Respondent said that there was one time that [REDACTED] discussed his levels being high with him, but he could not recall if it was in regards to this blood test or a different one. The Respondent did remember that [REDACTED] had been agitated on the day of that discussion. The Respondent said that his discussions with [REDACTED] were about his computer printouts and where he thought the Respondent was in his progress. The Respondent said that he was not taking these steroids to lose weight or increase his libido. He testified that he did not tell [REDACTED] that his sex drive was low at his initial visit. He stated that if it said in his medical records that one of his complaints was low libido, that would be incorrect.

The Respondent said that at some point during the first few months of the treatment [REDACTED] informed him that his levels were not coming up well enough and he started to have him double up on the testosterone. The Respondent said that he did not ask [REDACTED] what the numbers were. He acknowledged that he took another blood test on October 31 2006, and that according to the records his total testosterone level at that time was 2162. The Respondent stated that he did not remember how he was feeling during that time, but said that he remembered that as he went along with the therapy he was feeling better. At the time of the blood test he had been under treatment with both steroids and testosterone since the previous January. The Respondent said that during his visits he did ask [REDACTED] whether or not he was within the normal range and that aside from that one time where [REDACTED] told him he was high, he was always told that he was within the normal range. The Respondent stated that he did not have to pay another

\$1,000 fee in the beginning of 2007

The Respondent testified that he had filled all of his prescriptions at Lowen's Pharmacy, along with the testosterone cream he had been prescribed and the human growth hormones Genotropin, Norditropin, and Somatropin. The Respondent said that in May 2007, he became aware that Lowen's Pharmacy was raided by state investigators, but that it was his understanding that Lowen's was illegally filling prescriptions that were against federal regulation and he did not know whether or not Lowen's knew where the patients had gotten the prescriptions. He agreed that he did know that Lowen's was being investigated for doing something illegal involving steroids. He acknowledged that he had to pay the pharmacy to fill the prescriptions and that he was concerned enough about it that he talked to [REDACTED] when he saw him during the next office visit. [REDACTED] told him that the investigation did not involve him ([REDACTED]) and that it was nothing for him to be concerned about.

The Respondent said that he did not check with anyone in the Department about this and that he continued to patronize Lowen's after it was raided by state investigators. He believed that he had filled more than one prescription there after the raid.

The Respondent told the Court that at the time of this testimony he had been working in the 75 Precinct for a total of three years, six days, and 18 hours. He said that he would need to know that a particular location is on an off-limits list or a corruption-prone location list in order for him not to go there. He told the Court that whether or not he went to a place would depend upon the illegal conduct that they were being investigated for. As an example, the Respondent said that if a pharmacy was being investigated for being involved in Medicaid fraud, he would still continue to go there.

The Respondent acknowledged that in October 2007, there were newspaper articles which said that a search warrant had been executed on Lowen's Pharmacy by the King s County DA s Office and IAB These articles also indicated that [REDACTED] was involved in the investigation as well The Respondent said that he realized that this was the same [REDACTED] that he had been seeing for a little more than a year-and-a-half He also said that the articles alleged that there were officers who were seeing [REDACTED] and getting steroids from Lowen's, although nothing at the time specifically identified him

The Respondent reiterated that as soon as he saw that there was now possible or alleged criminal activity, he notified his union, who notified IAB He then asked to come in and speak to someone The Respondent said that they told him that they first had to see if he was going to be arrested and at some point that night, someone leaked his name to the press and it was in the newspaper the next morning The Respondent said that he does not have any information or evidence that anyone particularly leaked his name to the press, but said that the only people who knew were himself, his lawyer and IAB He did not know if the call he made was on the first or second day of the search warrant execution, but stated that he made it as soon as he saw it in the newspaper He testified that to his knowledge, at the time that the search warrant was executed, he was not specifically identified as an individual who was somehow involved in this investigation, but said that he was obligated to come forward to IAB

The Respondent reiterated that he went to IAB to speak with Mason and Campisi and that he volunteered information He told them that he was taking testosterone and human growth hormone and shortly thereafter a HIPAA release form was faxed to him The Respondent was told he had to sign it, releasing his medical records, and he really

did not think that he had a choice The Respondent did sign the release and IAB got a copy of his medical records He was subsequently interviewed in an official Departmental interview

After he spoke to [REDACTED] about Lowen's being raided, he did not ask to try to go to a different pharmacy He reiterated that he was not taking this medication for performance enhancement, but said that his energy became renewed and he was able to work out longer and more intensely than he had been able to while he was sick He said that, 'it resumed back to its normal level prior to the time when I was sick,' and that his strength and concentration also returned

The Respondent said that his treatment with Gordon involves getting injections of testosterone cypionate approximately every two weeks and that he attempted to get permission from the Department to be able to do that The Respondent said that he never did in fact get that permission

On re-direct examination the Respondent said that he specifically asked for a letter of denial, if the Department was denying him the permission to have the treatment with Gordon and that his district surgeon, Dr Edelman, told him that he could not do that The Respondent did not get a letter from anyone in the Department saying that he should not take the treatment with Gordon after he told them that he was planning to do so and he stated that 'they wouldn't give me a yes or a no'

The Respondent said that at the time he had the conversation with the man at the gym, the two of them were at the Evolution Fitness gym Shortly after the conversation took place, the gym closed and he started attending a new gym The Respondent never saw the man again

The Respondent said that at one point [REDACTED] explicitly told him that Somatropin, Genotropin, and Norditropin were human growth hormones. He could not recall at what point in the course of the treatment that was, but at one point [REDACTED] said that he was human growth hormone deficient, and that he was replacing the human growth hormone, "in addition to the fact that it helped the symptoms of hypogonadism." The Respondent said that it was not at the first visit but shortly thereafter.

The Respondent testified that he was not concerned about the price of the prescriptions because it was not the first time that he had paid out-of-pocket for a doctor or prescription, so to him it was worth it for his health. The Respondent was not aware that there were any alternatives to injections for the human growth hormone because he has never heard of any other type of delivery method, so he just assumed that there were not any. The Respondent is familiar with insulin injections.

The Respondent acknowledged that he had been asked about the fact that he knew that there were athletes who were getting into trouble for using the "same drugs" as he did. He was not concerned because in his mind there is a difference between using and illegally abusing [REDACTED]. [REDACTED] never told him the actual numbers of his testosterone levels but instead, "he used like a slide rule chart and said you are supposed to be here and you're here. Things like that." The first time that the Respondent ever heard the actual numbers was during his official Department interview. Also, [REDACTED] never showed him the parts of his chart that he was shown copies of during the testimony and that were received in evidence. Instead, he was shown computer printout pages.

The Respondent said that he did not speak to the Department when he first read about the Health Department raid of Lowen's in the spring of 2007, because it appeared

to be an administrative investigation by the Health Department of the State of New York He said, "It had nothing to do, as far as I knew, with criminal activity or the Police Department." The Respondent had not spoken to anyone in the Department about his diagnosis of testosterone deficiency, both because there was no reason to and also partly because he was embarrassed by it

When asked by the Court, the Respondent clarified that what he used under

[REDACTED] s treatment was a white topical cream

FINDINGS AND ANALYSIS

The timeline of events that form the background of this case are not in dispute On May 9, 2007 the New York State Bureau of Narcotics Enforcement, the law enforcement branch of the New York State Department of Health, conducted an inspection⁷ at Lowen's Pharmacy in Brooklyn

As a result of newspaper reports about that action Carione contacted Mark Haskins, an investigator with BNE On August 15, 2007, Carione accompanied Haskins when he went to interview [REDACTED] at his Seaview Avenue office on Staten Island During that interview [REDACTED] claimed he was being pressured by others, whom he named, to write prescriptions for testosterone According to Carione, [REDACTED] described a situation that degenerated into his being forced to write ever increasing prescriptions to people that he wasn't involved with treating and/or seeing Carione also described [REDACTED] as justifying his treatments as medically valid [REDACTED] claimed his treatments were "beneficial" and "helpful" and part of an "emerging science"

⁷ This description of the agency and the action it took is found in RX A, the application for a search warrant of Lowen's prepared by Captain Moore of IAB and dated October 15, 2007

Carione left that location and went to another one of [REDACTED] s offices at 821 Clove Road, Staten Island (see photos, DX 1 and 2), where he met up with Streffacio, who was present with another member of the BNE team

Another interview was conducted with [REDACTED] on October 5, 2007, at which time he was shown photographs of various members of the service [REDACTED] identified 18 members of the service as patients, including the Respondent. The audio recording of this interview was damaged and consequently was not available to be placed in evidence. A report outlining the results of the interview was prepared, albeit several months later, on December 11, 2007 (RX B). Carione testified that while [REDACTED] indicated that many of these 18 members of the service came to him to obtain steroids for bodybuilding or to bulk up and gain weight, the Respondent did not. Carione said that [REDACTED] described the treatment he gave to the Respondent as "medically necessary." [REDACTED] also told Carione that the Respondent lost weight while he was receiving treatment from him.

The Department obtained and executed search warrants for Lowen's Pharmacy on October 15 and 16, 2007. The Respondent requested an interview with the Chief of IAB and an informal interview resulting from that request was conducted on October 18, 2007. A subsequent official Department interview was conducted on January 14, 2008.

The Respondent acknowledged in these interviews and in his testimony at this trial that he was treated by [REDACTED] who prescribed steroids and human growth hormones which [REDACTED] told him to get from a compounding pharmacy, Lowen's. The Respondent said he went to [REDACTED] because of his of health complaints that were otherwise unaddressed. These included chronic fatigue, dizziness, chest pain and injuries that would not go away.

The Respondent testified that [REDACTED] told him based on tests he took, that the Respondent's problem was the result of a testosterone deficiency and that the purpose of the treatment was to restore his testosterone to "normal" levels. He said that he was not attempting to 'bulk up' but merely to regain his health. This then forms the factual background of the charges currently before this Court.

There was also the expert testimony in this case. While there were many aspects of the testimony from both expert witnesses, the overriding difference between them is very simple. Dr. Green testified that testosterone deficiency exists but is very rare. Dr. Gordon testified that testosterone deficiency is very common and generally undiagnosed. Gordon testified that the Respondent suffers from testosterone deficiency and supported [REDACTED]'s similar diagnosis. Green declared that the Respondent is not testosterone deficient. He stated that [REDACTED] and Gordon misdiagnosed the Respondent and improperly prescribed testosterone and in the case of [REDACTED] human growth hormones as well.

Background

During the trial of this matter many subjects came up that bear on the ultimate decision in this case. Before delving into the specifications themselves a review of some of these subjects, which bear on the Court's decision, is worthwhile.

Testosterone

Green explained that testosterone is a class of androgenic anabolic steroids. Anabolic steroids build up the body substance and androgens create male secondary sex characteristics. It is a Schedule III Controlled Substance under Federal law (see 21 USC

§ 812(c)), and a Schedule II Controlled Substance under New York State law (see Public Health Law § 3306)

Green listed a number of health issues associated with the use of testosterone including possible adverse effects on the heart, prostate, liver and kidneys. He noted that it lowers the good cholesterol or HDL which is associated with preventing heart disease. Green also noted that the risks associated with testosterone use tend to depend on the dose, risks being multiplied with higher doses.

Both Green and Gordon agreed that testosterone can cause aggressive behavior, referred to as "roid rage" at high levels of use. There are no studies to establish this because, as Green explained, they could not be ethically conducted.

Taking testosterone depresses the body's ability to produce testosterone by itself. therefore, the use of testosterone creates a need to use it again. Gordon testified that once patients start his testosterone treatment they will have to continue getting testosterone injections every two weeks for the rest of their lives, "if they want to stay healthy." Green described this effect differently. "There is also the risk of dependence. I treated several patients who became addicted to anabolic steroids. So that's a potential risk."

Green noted the impact of steroids on mood when he stated, "We have seen severe depression with people coming off these things." He also cited cases of several teenagers who killed themselves during the course of anabolic steroid treatment.

█████ prescribed a testosterone cream in 10% solution for the Respondent Gordon administers a 1% testosterone solution every two weeks by injection.

Human Growth Hormone

Human growth hormone was described by Green as "protein secreted in the

brain." There was no evidence to indicate that human growth hormone is a controlled substance, but it is highly regulated. Green explained that there are limited uses for human growth hormone and it is not permitted to be prescribed "off-label." 21 U.S.C.A. 333, subdivision (e) (see RX K), provides that the distribution of "human growth hormone for any use in humans other than the treatment of a disease or other recognized medical condition, where such use has been authorized by the Secretary of Health and Human Services is guilty of an offense punishable by not more than 5 years in prison."

The human growth hormone that the Respondent used was obtained at Lowen's compounding pharmacy. At first he was prescribed Genotropin and then switched to Norditropin. The Respondent injected the human growth hormone into his inner thigh six days a week.

[REDACTED]

[REDACTED] is, or at least was, an osteopath. He did not testify at this trial. We know from the interviews he gave to Carbone that he was engaged in improper dispensing of testosterone. He claimed at the time of the first interview on August 15, 2007, that others were pressuring him to prescribe steroids. On March 19, 2010, he pled guilty to the Class E felony of Conspiracy in the 4th degree. The specific overt act he admitted to was taking kickbacks from Lowen's Pharmacy for sending patients there. The agreed upon sentence was five years probation, surrender of his New York and New Jersey licenses to practice medicine and two hundred hours of community service (see plea minutes, RX J).

As has been mentioned, [REDACTED] also apparently believed in testosterone deficiency in a manner consistent with that of Gordon and maintained that he was providing medical treatment to the Respondent.

After becoming aware of news reports that the Department executed search warrants at Lowen's pharmacy, in October 2006 the Respondent met with members of IAB. He also stopped seeing [REDACTED] or using the treatment he prescribed.

Dr. Gordon

The Respondent originally sought out Gordon as an expert witness for this Departmental trial and indeed Gordon opined that [REDACTED]'s diagnosis and treatment of the Respondent were proper. The Respondent who complained that his medical problems returned after he stopped seeing [REDACTED], subsequently became a patient of Gordon and has been and is being prescribed testosterone by him.

As a result, the expert witness provided by the Respondent is also his treating physician. This resulted in many questions regarding the appropriateness of Gordon's current treatment of the Respondent. It is important to keep in mind that the Respondent is only charged regarding the treatment he received from [REDACTED].

Gordon, who operates an office called the "Testosterone Deficiency Treatment Center" and who has written a book called Testosterone Deficiency The Hidden Disease, spoke for the efficacy of his testosterone treatment.

Green's observation, that Gordon's conclusions are based on anecdotal reports and not on rigorous scientific testing, raise serious questions about the validity of Gordon's conclusions. Certainly it is worrisome that he believes that eight or nine out of ten men over the age of 50, with any one of a number of non-specific symptoms, are testosterone-deficient.

Gordon barely mentioned the need to explore other possible causes of the symptoms presented to him and scoffed at Green's assertion that a testicular examination

would be appropriate before administering a testosterone treatment

Given the hazards of testosterone it is further worrisome that Gordon feels it can be readily prescribed To be sure Gordon is more conservative than [REDACTED] in his treatments He did not prescribe the 10% testosterone cream [REDACTED] prescribed to the Respondent and he did not prescribe human growth hormones, but nonetheless he administered testosterone at and beyond the maximum level recommended

Considering his testimony as a whole, it is clear that Gordon is promoting what he calls "testosterone replacement therapy" as a panacea for virtually all of life's ills and certainly as a cure for symptoms of aging which he described as a disease His practice in this area, as he described it, amounts to little more than a place where testosterone is dispensed

This Court has great skepticism about the reliability and objectivity of Gordon's expertise

Dr. Green

Green has an extraordinary resume which encompasses both scholarly studies and clinical experience Green practices medicine at the Pacific Palisades Medical Group in California and he is a clinical professor at UCLA School of Medicine He is also the medical director for MLB, and since 2003 he has been the consultant to MLB on anabolic steroids and performance-enhancing drugs, a position which he still holds Green is also a team physician for Pepperdine University and for UCLA Intercollegiate Athletics He directs the UCLA Intercollegiate Drug Testing Program and is on the Medical Advisory Committee for the California Interscholastic Federation which oversees the health and safety of high school athletes in California He is on the

Advisory Board for the United States Soccer Federation, and is affiliated with the UCLA Olympic Analytic Laboratory performing research in drug testing and performance-enhancing drugs

He has written approximately 20 or more articles that have appeared in peer reviewed journals, approximately 20 book chapters, and approximately another 20 articles in non-peer reviewed medical publications. He has published articles on drug testing methods for various substances such as erythropoietin, dietary supplements and testosterone. He has also written numerous review articles with respect to the various drugs that athletes use and abuse for performance enhancement, as well as articles about human growth hormone relative to its abuse by athletes. He is board certified in internal medicine, as well as primary care sports medicine.

Through his work at the UCLA lab, Green has participated in studies involving testosterone. He has written several review articles on human growth hormone, chaired an international conference on the subject in 2009, was the guest editor of a journal that was solely devoted to human growth hormone and has given lectures around the country on that subject.

Green has testified in court and in grand juries regarding the use of anabolic steroids and performance-enhancing drugs. In addition to the NYPD, Green has worked with other departments in interpreting drug testing results and in designing education programs to deter officers from using anabolic steroids. He stated that he has also written an article in one of the police chief journals and has spoken to the International Association of Chiefs of Police regarding anabolic steroids and their use in police departments. Green's extensive background is set forth in more detail in the record and

his resume, (DX 6)

Green is a recognized expert in the field of testosterone use and abuse. This Court found him to be knowledgeable on the issue of testosterone and human growth hormone

Testosterone prescribed by [REDACTED]

[REDACTED] prescribed testosterone cream to the Respondent in a 10% solution. This is not available at ordinary pharmacies. [REDACTED] sent the Respondent to Lowen's, a compounding pharmacy which made up the testosterone cream in those strengths. Testosterone prepared commercially by pharmaceutical companies has a maximum strength of 1%

Green noted that the testosterone used by the Respondent was ten times the pharmaceutical grade. He noted that with testosterone there are therapeutic uses and supraphysiological uses. He testified that in his opinion, [REDACTED]'s 10% solution was supraphysiological dosing of testosterone.

Gordon testified that 10% testosterone cream was "absolutely not" a supraphysiological dose. He explained

The physiological replacement of testosterone is simply to make the patient healthy, for the most part to make them as if they were in their 20's, although there are plenty of men in their 20's who have a deficiency of testosterone, but basically to put them at their optimal health.

Gordon also explained that the amount of testosterone taken into the body depended on the "transfer agent" used and hypothesized that a 10% solution could actually be less potent than a 1% solution. He did not know the "transfer agent" used by Lowen's. Without knowing the transfer agent and its properties this testimony is pure conjecture.

What Gordon did not mention is that by that same logic the 10% cream could have been very potent if the unknown transfer agent used by Lowen's was effective at absorbing testosterone into the body. In fact, there is no information to indicate that the transfer agent used by Lowen's was the same in each batch. In effect his testimony underscored the dangers inherent in using steroids prepared in this manner.

The high testosterone readings

[REDACTED]'s medical records for the Respondent are in evidence (RX C). Within those records are the blood tests analyzed by Quest Diagnostics. Each laboratory report lists the reading and the reference range for testosterone and free testosterone. The report also notes when a reading is outside the range, in boldface type and with an "H" for high or an "L" for low. In two of the blood tests the readings for testosterone were about double the upper limit in the range provided. The reading for the test taken on June 13, 2006, was 2252 while the reading for the test taken on October 31, 2006, was 2162. The high end of the range was 1000.

Both Gordon and the Respondent attempt to explain the high reading. The Respondent recalled one occasion in the summer of 2006 when [REDACTED] was agitated over the fact that he had a high reading. Given the date, this event would have had to have been a review of the June 13, 2006 test, as the next test was not until October. The Respondent testified that he and [REDACTED] determined that he had put the testosterone cream on prior to the test which skewed the results.

The problem with this explanation is that it is nothing more than hypotheses as to how that high reading occurred and indeed another similar high reading occurred on the

next test when presumably the problem of putting testosterone on before the test had been solved

Gordon came up with another explanation about how the high reading or readings might have occurred. He testified about how putting the cream on the same arm from where blood was taken would skew the results. This explanation is complete conjecture and again one would presume that if there were some concern about the first high reading, [REDACTED] would have taken all appropriate steps to correct the problem or problems.

Of course the high October test reading could have been the result of excess testosterone intake. Moreover, if the October reading was the result of excess intake then the hypothesis about how the high reading occurred in June could have been wrong and it too could have been the result of excess testosterone intake.

These two readings along with the reading of March 3, 2006 where the Respondent registered 1108, which is above the maximum range, remain troublesome and may well indicate that the Respondent had high levels of testosterone from March through October.

Just how high are these readings? The June 2006 reading was 2252. The range for testosterone is listed for that laboratory and test as being 260 to 1000. As has already been noted, that reading is more than double the high end of the range.

Gordon testified that most testosterone is bound up and biologically inactive. He explained that the free testosterone is what matters because it is biologically active and Green agreed with this analysis. The free testosterone reading in October 2006 was 806.4. The range for free testosterone was 50 to 210. Thus, the free testosterone in

October was nearly four times the high end of the range

During his testimony Gordon was asked about the use of human growth hormone to treat adult deficiency of that hormone. Regarding the symptoms of adult human growth hormone deficiency Gordon testified that "I know what is said to be the symptoms I don't know what the symptoms are." He went on to say that after checking on the internet he found that the symptoms are the same as that for low testosterone. He does not prescribe human growth hormone because he doesn't believe in it, but he did testify that there are "quite a few" doctors who treat human growth hormone deficiency with human growth hormone.

This is hardly authoritative or credible testimony to support [REDACTED]'s practice of prescribing human growth hormone. It is difficult to even characterize it as "expert" testimony. Gordon did not cite one medical test that [REDACTED] performed, or anything else in [REDACTED]'s medical records to support the use of this substance.

Green, on the other hand, has extensive credentials regarding the use and misuse of human growth hormone. He indicated that the use of human growth hormone is very strictly regulated, that there are very few authorized uses and that these are very rare conditions that doctors in primary care would likely never see.

Green opined that there was no basis for [REDACTED] to have prescribed human growth hormone to the Respondent. Although there was significant cross-examination on this issue he did not change his opinion. He indicated that there might be some symptoms that could, in theory, be connected with human growth hormone deficiency, but Green asserted that a proper diagnosis would require a more thorough evaluation. He

indicated there are tests that should be conducted to properly determine that there is adult human growth hormone deficiency. Among these he described the growth hormone simulation test as the "gold standard" in terms of diagnosis.

Further, he testified that one of the other tests would be the IGF-1 levels which he described as crude way of assessing if human growth hormone deficiency exists. These readings were available to [REDACTED] and are reflected in his records. Commenting on this Green testified

In addition, his IGF-1 level, which you see on the first page, is well within the normal limits, and to treat somebody with growth hormone based on an IGF level that was normal, again, while IGF-1 is not used as a standard for growth hormone deficiency, it's not even low. So I don't see any justification based on this for testosterone treatment or for human growth hormone treatment.

The record in this trial establishes that there was no basis for [REDACTED] to have prescribed human growth hormone to the Respondent because the Respondent did not have adult human growth hormone deficiency. In addition it would appear that [REDACTED] violated 21 U S C A 333, subdivision (e) when he gave human growth hormone prescriptions to the Respondent.

It is also worth pointing out that Gordon's testimony on this subject, which implied that the use of human growth hormone by [REDACTED] was within the normal course of medical care even though it is something he does not do, raises significant questions about both his expertise and his objectivity.

Filling prescriptions from Lowen s

In her written closing argument the Advocate argued that the Respondent should have been alerted to a problem with [REDACTED]'s treatment when he was told that the one

pharmacy he could fill the prescriptions at in the entire "tri-state area," was Lowen's

Given what we now know about his kickback arrangement with Lowen's. [REDACTED]
certainly wanted the Respondent to use that pharmacy, but there is no evidence that

[REDACTED] told him it was the only pharmacy in the tri-state area he could use. The Respondent testified that he was told he had to go to a compounding pharmacy. Lowen's was suggested, and given its location in Brooklyn, the Respondent went there because it was convenient.

On the other hand the fact that he was obtaining a controlled substance, testosterone, in a manner that could only be filled at a compounding pharmacy certainly should have caused the Respondent some concern.

The man at the gym

The Advocate has made much of the fact that the Respondent learned of [REDACTED] from a man at the gym whose name the Respondent did not know. To be sure there was testimony that the criminal conspiracy involving [REDACTED] and Lowen's also involved individuals at Dolphin Gym who steered prospective testosterone users to [REDACTED]. The Respondent did not go to Dolphin Gym. There is no evidence that this anonymous man worked for or with [REDACTED]. Even if he did, it is hard to see what probative or evidentiary value that would have on the issues before this Court. The decision to go to [REDACTED] and accept treatment from him rested with the Respondent. Either that decision was actionable misconduct or it was not.

Other cases arising from this investigation

In her rebuttal summation, the Advocate, after complaining that Respondent's

counsel went outside of the evidence in his argument, proceeded to cite the result of a series of plea negotiations in other steroid cases arising out of the Lowen's and [REDACTED] investigation, which are completely outside the record. This Court cannot consider matters outside the record on the issues of its findings on the specifications in this case, no matter who raises them. Additionally, the decision by other officers in situations similar to the Respondent's to plead guilty is not dispositive of the issues in this case nor is it cognizable evidence of the guilt of this Respondent.

Specification No 1

Specification No 1 charges that the Respondent "did possess and/or use anabolic steroids and/or human growth hormones (hGH) for purposes outside the normal course of standard medical care."

Purpose for seeking treatment

The first issue that must be decided is the purpose for which the Respondent sought treatment from [REDACTED]. Both expert witnesses agreed that the use of steroids for bodybuilding is inappropriate and dangerous. The Respondent claims that he went to [REDACTED] seeking treatment for medical problems. He denied seeking steroids for bodybuilding purposes.

Although it was not a significant issue during the trial, the Department did claim in its written closing argument that the only logical conclusion that can be drawn from the totality of the circumstances is that "when the Respondent went to see Dr. [REDACTED], he was specifically seeking a doctor who was in the business of prescribing anabolic steroids." This conclusion does not address all of the evidence.

The Respondent asserted that he had troubling health problems which he claims led him to [REDACTED] in the first place. This assertion is supported by outside facts which could have been challenged and were not. For instance, the Respondent's claim that he had told former Chief Scagnelli that he was having health problems is unchallenged. The Respondent's claim that as a result of his discussion with Scagnelli he went to see Dr. [REDACTED] is unchallenged. His claim that [REDACTED] did a thallium stress test on him is unchallenged. This conduct is consistent with someone with health concerns and not someone merely seeking steroids.

The one caveat to this is that the Respondent admitted that when he was told about [REDACTED] by someone in the gym, he was told that [REDACTED] did hormone replacement. That could have and should have indicated to the Respondent that [REDACTED] might be prescribing testosterone and/or human growth hormone.

When [REDACTED] was interviewed by Carbone, [REDACTED] stated that while other officers came to him to obtain steroids for bodybuilding purposes, the Respondent did not. [REDACTED] asserted that the Respondent came for the treatment of genuine health issues. There are legitimate reasons to question [REDACTED]'s credibility but there is no apparent reason for him to have lied to Carbone about this.

The Respondent volunteered that he goes to the gym every day, that he spends two to three hours there and that he has done so for years. This might give rise to the suspicion that he was pursuing steroids and human growth hormone in connection with that activity, but it is not proof of it. The totality of the evidence indicates that the primary reason the Respondent went to [REDACTED] was to obtain treatment for his perceived medical ailments, but that he was or should have been, aware that in the process of going

to [REDACTED] he was also seeking treatment with testosterone and/or human growth hormone

Normal course of standard medical care

Specification No 1 alleges that the Respondent used testosterone and human growth hormone outside the normal course of standard medical care Green offered authoritative and credible evidence that the treatment given by [REDACTED] was outside the normal course of standard medical care For example in his written report dated April 3, 2008 (DX 7), under the heading, "Actions of Dr [REDACTED]" Green concluded that "It is my opinion that the actions of Dr [REDACTED] are well below the standard of care and there are no legitimate indications for the use of either testosterone or human growth hormone His [REDACTED]'s initial evaluation of the Respondent is clearly inadequate and neglects many other possible causes for his symptoms His [REDACTED]'s evaluation is clearly substandard "

Even Gordon who initially testified that [REDACTED]'s treatment was within the normal course of standard medical care later acknowledged that his notions about testosterone deficiency reflect an "enormous minority" opinion As his treatment of alleged testosterone deficiency is more conservative than [REDACTED]'s, (he did not prescribe human growth hormone he did not prescribe 10% testosterone cream from a compounding pharmacy, but used the commercially prepared 1% testosterone), it seems fair to say that he conceded that [REDACTED]'s notions about testosterone replacement treatment were outside the norm as well

There is, therefore, very substantial evidence that the testosterone and human growth hormone treatment prescribed by [REDACTED] and used by the Respondent were

outside the standard course of medical care

Good order, efficiency and discipline

The above finding brings us to the next set of issues First, is it actionable misconduct for the Respondent to receive medical treatment outside the standard course of medical care and second, can the Respondent be held responsible for following the treatment recommended by a doctor

The Respondent, in his closing argument, framed the first question somewhat differently when he challenged whether the Respondent's conduct had any effect on the good order, efficiency or discipline of the Department

In making this argument the Respondent focused on one of the arguments made by the Advocate regarding the so-called "conduct prejudicial to the good order efficiency and discipline aspect of Specification No 1 The Department argued that unfavorable newspaper coverage regarding the Respondent established that element of the specification and even put a newspaper article in evidence to support that claim On this point the Court agrees with the Respondent News coverage, important as it may be, is generally irrelevant to the issue of Departmental misconduct Either the act itself constitutes misconduct within the context of the Department or it does not

But the newspaper article was not the only evidence put forward by the Department to support the element of "conduct prejudicial " There was ample evidence developed by the Department regarding the dangers of testosterone as well as legal issues related to the use of testosterone and human growth hormone

Indeed the gravamen of Specification No 1 lies in the nature of these drugs that

[REDACTED] prescribed and that the Respondent used Testosterone is a controlled substance, the misuse of which is a criminal matter Human growth hormone is regulated and that regulation is enforced through the criminal law Used individually and particularly in combination, testosterone and human growth hormone are implicated in steroid abuse

As noted previously, based on the testimony from Green in this case, it would appear that [REDACTED] violated the law when he prescribed human growth hormone to the Respondent Although the Respondent himself did not commit the criminal act he was part of it

The Department has an interest in the conduct of its members related to possible criminal activity and this is one way in which the Respondent's conduct impacted on the good order, efficiency and discipline of this Department

There has also been testimony from both Gordon and Green about the fact that testosterone intake can lead to heightened levels of aggression or "roid rage "

To be sure, Gordon testified that in 75 percent of men the moderate use of testosterone calmed them down He further said that "roid rage" occurs at high levels of intake as in when it is used for bodybuilding purposes Gordon's testimony leaves a number of important questions For instance, he did not say what happened to the other 25 percent Gordon did not indicate the period of time covered by his observations, thus we do not know, based on his statement, if for example, long-term use of testosterone has a negative effect on mood and temperament that does not manifest itself in short-term observations All of Gordon's assertions are anecdotal and there is the serious problem, seen elsewhere in his testimony, that he emphasizes the positive effects of testosterone use Put another way, there is no control mechanism to ensure that he is not, even

unintentionally, omitting results that do not support his thesis regarding the virtues of testosterone therapy

As has been mentioned, none of the assertions about aggression are based on scientific studies which, Green explained, cannot be done for ethical reasons. However, both doctors agree that "roid rage" exists at high levels of testosterone use. The possibility that "roid rage" might occur at lower levels or develop over time, with regular use, must be considered. Further, there is evidence that in this case the Respondent might have had significantly elevated levels of testosterone during his treatment by [REDACTED]

The Department and the public it serves have a very strong interest in ensuring that police officers do not have heightened levels of aggression as a result of testosterone intake and must therefore take a very conservative approach.

The good order, efficiency and discipline of the Department are potentially imperiled when an officer, no matter how slightly, could be subject to heightened aggressive behavior as a result of having ingested a controlled substance.

The improper use of testosterone and human growth hormone is actionable misconduct within this Department.

Respondent's accountability

The Respondent has argued that he relied on the treatment he received from his doctor [REDACTED] and that he had a right to rely on the fact that he was taking these medications subject to prescription.

Doctors are neither infallible nor universally ethical. The prescriptions here involved a controlled substance and drugs that were widely reported to be the subject of abuse and the Respondent was aware of this. A member of this Department needs to

exercise an extra measure of caution when dealing with substances that are prone to abuse

There is every reason to believe that the Respondent understood and ignored the abuse in this situation. As the Department has noted, there were warning signs such as the manner in which [REDACTED] was paid and the fact that no insurance would pick up even part of the cost. Even the sign on the building where [REDACTED] practiced, and where the Respondent saw him, should have triggered concern. "The Fountain of Youth Building" sign was a fair announcement that the testosterone and human growth hormone he was receiving inside were for performance enhancement rather than treatment purposes. If there was any doubt there was a series of smaller signs listing the medical servicers in the building (see DX 2) [REDACTED] is the only one that has a reference to the fountain of youth. His sign advertised him as operating the "Life Longevity Center."

The way his medical visits to L [REDACTED] started should also have caused concern. The Respondent did not see [REDACTED] or receive any kind of physical checkup on his first visit. He merely had blood taken. The fact that he was obtaining a controlled substance from a compounding pharmacy and self-injecting human growth hormone into his thigh should also have raised his concern about this treatment.

Each of these factors by themselves might not have been enough but in combination they should have gotten the Respondent's attention. Moreover, the Respondent testified that he had checked on the internet and, if he was not aware before, certainly learned at that time how controversial [REDACTED] s treatment was. In his internet search he also should have discovered that there were both health and legal concerns about taking testosterone and human growth hormone. He should also have learned if he

did not already know, about the possible effects of testosterone on mood and temperament. Clearly the Respondent turned a blind eye to the many indications that something was not right about the treatment he was receiving.

Lest there be any doubt, the Respondent was in fact amply aware of the dangers of using anabolic steroids well before he went [REDACTED] s office. Further he was amply aware of his responsibility as a member of the service to make certain that his use of testosterone and human growth hormone was within the normal course of standard medical care.

The Respondent testified:

Well, I have been in gyms my whole life. I seen [sic] people die from abusing this, and also from what I do for a living. I had to be sure that I wasn't doing anything that could even be perceived as being illegal or improper.

He also testified that

I questioned the replacement because I am a police officer and I know that these substances are used for bodybuilding and that it's dangerous. So from a professional and a personal standpoint I wanted to make sure that it was proper and stayed within normal bounds.

He added, 'I told him ([REDACTED]) that my levels can never go above normal. I wanted to be very careful about that.'

But he was not careful and his levels did go well above normal. Obviously his conduct did not match his claimed level of concern.

Perhaps the best example of how he purposefully ignored this issue can be seen in his testimony about the high testosterone reading he learned about in July 2006. When [REDACTED] told him the June test was high they explained it away, he said, by determining that he had taken the testosterone just before the test, skewing the result.

No supplemental blood test was taken to see if the reading was really an error and testosterone treatment continued unabated. The next test, months later in October 2006, got another high result and seems to have caused no alarm at all. Once again no extra test was taken and testosterone treatment was continued. This conduct is not consistent with concern about high levels of testosterone.

The Respondent states that he discussed each reading with [REDACTED] but did not actually see them. These are his tests. He had a right to see them and the normal range is listed right on the test form. His claim that he did not review the tests is inconsistent with his testimony that he was concerned about having readings that were too high.

The Respondent denied knowing at the beginning of his treatment that the Somatropin⁸ he was prescribed by [REDACTED] was a form of human growth hormone. He said he believed it was merely a hormone. This makes little sense as he acknowledged paying over \$400 a month for this drug which he injected into his thigh six days a week.⁹ Further, he acknowledged having checked it out on the internet. Any check on the internet should have revealed, immediately, that Somatropin is human growth hormone. It is simply not credible that the Respondent did not know that he was injecting himself with human growth hormone.

Considering the evidence as a whole, there is every indication that the Respondent knew or should have known that something was amiss with the treatment of human growth hormone and testosterone he was receiving from [REDACTED]. To the extent that he did not know about these problems it was the result of a very determined and purposeful ignorance.

[REDACTED]'s records indicate that he was prescribed Genotropin and Norditropin.

⁹ The Respondent testified it was about \$500 or \$600 a month at his official Department interview. He also said at that time that the testosterone was an additional \$150 every few months.

The Respondent is found Guilty of Specification No 1

Specification No 2

The second specification deals with the fact that the Respondent continued to obtain prescriptions at the Lowen's Pharmacy after what has been described as the New York State raid on the premises on May 9, 2007

This second specification is particularly susceptible to what might be termed the "wisdom of hindsight." To fairly assess this specification it is necessary to put oneself into the position of the Respondent at the time in question, which is the period after the BNE inspection of Lowen's and up to the Department's execution of a search warrant at that premises

The Respondent had been sent to Lowen's by [REDACTED] to obtain prescriptions that [REDACTED] said could only be obtained at a compounding pharmacy. The Respondent also indicated he used Lowen's because it was on his way to work.

We don't know exactly what the Respondent knew about the BNE "inspection" ¹⁰ at the time and the only evidence on this subject comes from his own statement. The Respondent's testimony indicates that he believed that the BNE action at Lowen's was administrative in nature, which it seems to have been because among other things, there is no evidence that they acted pursuant to a search warrant. Further, he said he learned from [REDACTED] that the problem involved prescriptions that were obtained over the internet without a face to face meeting between doctor and patient. He did not know what knowledge or culpability Lowen's had. The fact that they were filling prescriptions

¹⁰ As noted previously this is word used by the Department to describe this action by BNE in its search warrant application (see RX A)

something pharmacies are known to do, might have supported his belief that Lowen's did nothing wrong and certainly nothing criminal

Lowen's was apparently not padlocked and continued to fill the Respondent's prescriptions. This certainly would have reinforced [REDACTED]'s message that nothing was really wrong at Lowen's

At the same time Carone was in communication with Haskins and getting a very different picture of Lowen's. On August 15 2007, Carone interviewed [REDACTED] who broke down crying and admitted to all sorts of misconduct regarding the distribution of testosterone. Further, [REDACTED] claimed that he was being coerced into prescribing that substance through Lowen's, as has already been mentioned, he later pled guilty to taking kickbacks from Lowen's

If the Respondent knew what Carone knew, this charge might make sense. Indeed, after the NYPD raid in October, when he learned some of what Carone knew through newspaper reports, the Respondent did notify IAB. Knowing what he knew at the time of the BNE raid, it is not clear that the Respondent had any reason to cease patronizing Lowen's

Analogies are always flawed but they offer some insight into an issue. Recently, the Securities and Exchange Commission filed suit against a major Wall Street brokerage firm, charging it with misconduct. There were numerous reports that criminal charges might follow. Is every police officer who has a brokerage account or other business dealings with that firm required to cease doing business with it because there might be an indictment? This of course is a rhetorical question but it raises the issues that are relevant to this case.

In explaining this charge the Advocate offered a different analogy. She suggested that it would be inappropriate for a member of the service to go into a restaurant that had been raided for employing illegal immigrants or selling drugs out of its food containers, even if such an establishment was not on the designated off-limits location list.

This argument is hardly persuasive. First of all, such an establishment, particularly one selling drugs in the manner described would be padlocked by this Department. As has been noted, there is no evidence that Lowen's was ever closed down. Second, in the scenario provided by the Advocate the Respondent would have been on notice that actual crimes had occurred or at least that an actual crime was alleged to have occurred. There is no evidence before this Court that there had been reports or that the Respondent knew of criminal conduct at Lowen's. In fact, there is no evidence before this Court that the Lowen's Pharmacy or anyone from Lowen's was ever charged with any crime.

The Advocate mentioned the 'off-limits list' in her example about the restaurant. If the Department, which had much more information than the Respondent, felt that Lowen's should be a designated off-limits location, it could have put out such a notice. No evidence was offered to establish that Lowen's, which is still in business, is or has ever been on any designated off-limits location list as per Patrol Guide procedure 203-21.

It certainly could be argued that the Respondent should not have gone to Lowen's in the first place. That is not what this charge is about. It could also be argued that the BNE raid was yet another sign, which the Respondent ignored, indicating that the treatment he was receiving from [REDACTED] was improper, that too is not what this charge is about. This charge is about his "patronizing" Lowen's after the BNE raid.

Given what he knew at the time there was no reason for the Respondent to assume that it was improper for him to "patronize" Lowen's. The Respondent is found Not Guilty of Specification No 2

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v Board of Education*, 34 N Y 2d 222 (1974)

The Respondent was appointed to the Department on November 7, 1979
Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum

Recommending an appropriate penalty presents a unique challenge. On the one hand, the Respondent has had a long and distinguished career with this Department. On the other hand, he is a chief officer and has the responsibility to set an example of good conduct—something he failed to do.

The Department has recommended a penalty of the loss of 60 vacation days. That penalty is not available as the Respondent has been found guilty of one specification and the maximum penalty authorized by _____ involves the loss of 30 days

As noted earlier, the Advocate did mention in her reply brief the fact that other cases arising out of the Lowen's investigation have been settled.¹¹ While this Court rejected any consideration of those cases regarding a finding on the specifications, they can be considered on the issue of penalty. In almost all of these settled cases, the penalty

¹¹ The Court did not consider the description of cases provided by the Advocate as they remain outside of the evidence and differ from the records maintained by this office in DCT Law, which is the official repository of Departmental case law.

involved the loss of 30 days and one-year dismissal probation. They also involved additional drug screening as part of the penalty package.

The Respondent did voluntarily submit to drug screening at the outset of this investigation, however, additional drug screening should be a part of the dismissal probation in this case. The reason for this is that the Respondent continues to receive treatment from Gordon who, while more restrained than ██████████ expressed an expansive attitude toward the use of testosterone.

Gordon has administered injections of testosterone cypionate to the Respondent at the maximum dosage (this is more than twice the amount Green testified would be appropriate for testosterone replacement) and has on several occasions exceeded that maximum dosage. He testified that he does not rely on testing to determine testosterone levels but instead relies on the symptoms, which are as broad as they are vague. These factors leave open the possibility that his testosterone replacement therapy could lead to abuse of this substance.

A penalty involving the loss of 30 vacation days and dismissal probation is consistent with other cases. Additionally, some form of on-going drug screening, including but not limited to testing for anabolic steroids, appears to be not only consistent with other cases but necessary.

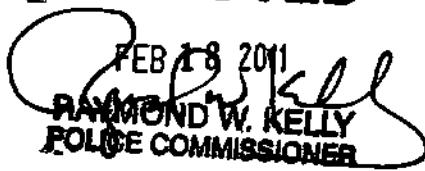
For the aforesaid reasons, this Court recommends that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion.

and may be terminated at anytime without further proceedings. Further, this Court recommends that the Respondent forfeit 30 vacation days

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner - Trials

APPROVED


FEB 18 2011
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From Deputy Commissioner – Trials

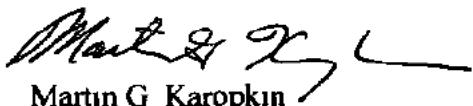
To Police Commissioner

Subject CONFIDENTIAL MEMORANDUM
 DEPUTY CHIEF MICHAEL MARINO
 TAX REGISTRY NO 873220
 DISCIPLINARY CASE NO 83969/08

In his 31-year career, the Respondent has received 55 medals for excellent police duty, 12 medals for meritorious police duty, and nine commendations

[REDACTED]
[REDACTED] He has no prior formal disciplinary history

For your consideration


Martin G. Karopkin
Deputy Commissioner - Trials